

## Chapter XCVI

### APPROPRIATIONS IN CONTINUATION OF A PUBLIC WORK.

---

1. The rule. Section 3701.
  2. General principles as to continuing work. Sections 3702-3704.
  3. Interpretation of the words "in progress." Sections 3705-3708.
  4. Meaning of the words "works and objects." Sections 3709-3715.<sup>1</sup>
  6. Construction of the rule as to works in general. Sections 3716-3722.
  6. As to new vessels, light-houses, dry docks, etc. Sections 3723-3736.
  7. As to new factories and buildings. Sections 3737-3740.
  8. New buildings at existing institutions. Sections 3741-3761.
  9. Selection of a site not beginning of work. Sections 3762-3765.
  10. Purchase of land adjoining a Government property. Sections 3766-3776.
  11. As to rent, repairs, paving, etc. Sections 3777-3781.
  12. Surveys, etc., not beginning of work. Sections 3782-3785.
  13. Decisions on the general subject. Sections 3786-3809.
- 

**3701. The requirement that appropriations in general appropriation bills shall be authorized by existing law does not apply to continuation of appropriations for public works or objects in progress.**—Section 2 of Rule XXI<sup>2</sup> provides:

No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress. \* \* \*

**3702. An appropriation in violation of existing law is not in order for the continuance of a public work.**—On April 20, 1900,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union and the Clerk had read this paragraph:

Armor and armament: Toward the armament and armor of domestic manufacture for the vessels authorized by the act of March 2, 1895; for those authorized by the act of June 10, 1896; for those authorized by the act of March 3, 1897; for those authorized by the act of May 4, 1898; for those authorized by the act of March 3, 1899, and for those authorized by this act, \$4,000,000: *Provided*, That the Secretary of the Navy is hereby authorized to procure by contract armor of the best quality for the battle ships *Maine*, *Ohio* and *Missouri*, authorized by the act of May 4, 1898, at a cost not to exceed \$545 a ton of 2,240 pounds, including royalties.

Mr. W. D. Vandiver, of Missouri, made the point of order that the words "five hundred and forty-five dollars" changed existing law.

---

<sup>1</sup> See also section 3598 of this volume.

<sup>2</sup> For full form and history of this rule see section 3578 of this volume.

<sup>3</sup> First session Fifty-sixth Congress, Record, p. 4500.

The existing law had been placed in former appropriation bills, and in the debate question was raised as to whether or not it was simply a limitation upon the price to be paid for armor bought with those particular appropriations, or whether it was a general limitation on all armor to be purchased for those vessels.

It was also urged that the purchase of armor for these vessels was the continuation of a public work; but in response to this the Chairman, cited the last clause of section 2 of Rule XXI—

Nor shall any provision changing existing law be in order or any general appropriation bill or any amendment thereto.

and held as follows:

The Chair has been referred to the law of 1899, "armor and armament." The paragraph of that law—the whole paragraph—relates to the armament—to armor and armament of domestic manufacture for the vessels authorized by the different acts from 1894 to 1898, inclusive, with the proviso:

*“Provided, That in procuring armor for the seagoing coast-line battle ships and the harbor-defense vessels of the monitor type, authorized by the act making appropriations for the naval service for the fiscal year ending June 30, 1899, and for other purposes, approved May 4, 1898, the Secretary of the Navy may contract for suitable armor for said vessels under the limitations as to price for the same as fixed by this act: And provided further, That no contracts for the armor of any vessel authorized by this act shall be made at an average rate exceeding \$300 per ton of 2,240 pounds, including royalties, and in no case shall a contract be made for the construction of the hull of any vessel authorized by this act until a contract has been made for the armor of such vessel.”*

Now, the Chair thinks, taking the whole paragraph, that the intention of Congress in passing that law, and the intention of the law, was to apply to the armor for all of those vessels, and that it was not a limitation upon the appropriation, but was positively a legislative limit on the price of armor plate of \$300 per ton, and, of course, to fix a limit at a greater price in this bill would be a change of existing law. Therefore the Chair sustains the point of order.

**3703. An amendment for the enlargement of a general service of the Government is not in order under the clause relating to the continuation of a public work or object.**—On February 2, 1900,<sup>2</sup> while the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

For the support of a school for the blind, to be provided for by contract by the Secretary of the Interior, in the Indian Territory, the sum of \$10,000. And the Secretary of the Interior, under such rules and regulations as he may prescribe, may admit to such school blind children of other than Indian blood residing in such Territory. So much of said expenditure as may be found by the Secretary of the Interior to be incurred on behalf of Indian children shall be paid out of the school funds of the tribe to which such child belongs.

Mr. Joseph G. Cannon, of Illinois, made the point of order that no law authorized the expenditure, especially the portion relating to children not Indian.

After debate the Chairman<sup>3</sup> held:

The Chair understands that the question still presented for determination is whether the paragraph as reported in the bill is obnoxious to the point of order made under Rule XXI by the gentleman from Illinois. The Chair will restate the question as he understands it.

<sup>1</sup> Sereno E. Payne, of New York, Chairman.

<sup>2</sup> First session Fifty-sixth Congress, Record, pp. 1458–1460.

<sup>3</sup> William H. Moody, of Massachusetts, Chairman.

The objection is made that the paragraph is in violation of Rule XXI, which provides that—

“No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress.”

No law authorizing this appropriation has been brought to the attention of the Chair by any gentleman. The Chair does not understand that it is contended that the appropriation is authorized by any provision of existing law. But it is contended that, it being in furtherance of a great public object which the Congress of the United States has hitherto supported, it comes within the exception to the prohibition of Rule XVI as “a public work and object already in progress.”

If the object of this appropriation is a public work and object already in progress, then it is in order in this bill. If it is not, it is not in order in this bill. It is unquestionably true that there are some decisions of previous presiding officers of the House and committee which sustain the construction of the rule for which the gentleman from Arkansas contends. The decision to which he refers, that a provision in a naval appropriation bill for the construction of ships is in order as a public work and object in progress because the policy of the Government is to construct and maintain a navy, is one of these; but, although that decision has been followed always in like cases, it seems to the Chair that its authority has never been recognized as going beyond the exact facts of that case, and that it ought not to be extended.

Perhaps, also, the decisions with regard to railway mail special facilities would support the contention of the gentleman from Arkansas. On the other hand there are many precedents giving to the words “public work or object already in progress” a much more restricted meaning. It has been held that an appropriation for a dry dock for the Navy was not in order on a general appropriation bill, by Mr. Butterworth on April 10, 1890, first session Fifty-first Congress; by Mr. Shively on April 13, 1892, first session Fifty-second Congress; by Mr. Hopkins on March 25, 1896, first session Fifty-fourth Congress, and by Mr. Sherman on February 23, 1897, second session Fifty-fourth Congress. It is certainly difficult to distinguish in principle these decisions from the decision respecting the construction of ships.

The maintenance of the Light-House Service is a public object to which the Government is as fully committed as to the maintenance of a navy. Yet it has been held that an appropriation for establishing a light (June 21, 1886, Reagan, first session Forty-ninth Congress) or for the construction of a tender for that Service (June 21, 1886, Reagan, first session Forty-ninth Congress) was not in order.

On April 25, 1890, first session Fifty-first Congress, a point of order was made against an appropriation, for nine members of the board of pension appeals, the law constituting the board providing only for three members. It was urged against the point of order that the granting of pensions was a public work or object in progress, and that the appropriation, being necessary to the execution of that work or object, was in order. Mr. Payson sustained the point of order.

The latter class of decisions seem to the present occupant of the chair to be in better accord with the spirit and purpose of Rule XXI. If the rule has the meaning which the gentleman from Arkansas attributes to it and the ship decision gives it, there would be little or nothing of significance or restraint in it. The appropriations committees would have a broader power than the rules intend to bestow upon them.

Finding some general purpose of Congress well established, they might appropriate for any instrumentality, however novel, which would promote that purpose. Such a construction of the rule would rob the legislative committees of their rightful jurisdiction. The Chair thinks that the words of there have a much more limited meaning; that the words “public work and objects already in progress” refer to specific and tangible things whose construction or support has heretofore been undertaken by the Government. Tested by this rule, the establishment of a school for the blind is not in order in this bill. Accordingly, the point of order is sustained.

**3704. The continuation of a public work must not be so conditioned in relation to place as to become really a new work.**—On May 5, 1900,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read a paragraph providing for the erection of an extension of the Government Hospital for the Insane.

---

<sup>1</sup>First session Fifty-sixth Congress, Record, p. 5194.

To this Mr. David A. De Armond, of Missouri, offered an amendment to provide that this extension should be—

upon land already owned by the Government or such land, if any, as may be donated to the Government for the purpose.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment would allow the extension to be built anywhere, whereas the act creating the hospital located it in the District of Columbia.

After debate the Chairman<sup>1</sup> said:

All these paragraphs have relation to an established hospital. The Chair has already ruled and will continue to rule that any proposition to extend that hospital would not be subject to a point of order, because it is to be regarded as a continuation of a public work already in progress. The Chair was therefore disposed to hold the amendment in order until the gentleman [Mr. De Armond] conceded that the amendment properly construed would justify the erection of a hospital somewhere else than in connection with this hospital for the insane in the District of Columbia. That being the conceded meaning, the Chair sustains the point of order.

**3705. Question as to whether or not a public work or object, to come within the terms of the rule, must be actually “in progress.”**—On May 15, 1906,<sup>2</sup> the naval appropriation bill was under consideration in Committee of the whole House on the state of the Union, when the paragraph was read providing for contingent expenses of the Marine Corps.

Mr. Adolph Meyer, of Louisiana, proposed an amendment as follows:

Erection of marine barracks and officers' quarters, \$15,000, which sum shall be in addition to \$15,000 appropriated for this object in the naval appropriation act approved March 3, 1901, and \$6,500 provided in the naval appropriation act approved April 27, 1904, for the naval station at New Orleans, La., \$15,000.

Mr. James A. Tawney, of Minnesota, made the point of order against the amendment.

Mr. Meyer stated:

Mr. Chairman, I hardly think that provision is subject to the point of order, as it is simply an addition for an establishment heretofore authorized in two appropriation acts. It provides that it shall be in addition to \$15,000 appropriated for this object in the naval appropriation act approved March 3, 1901, and \$6,500 provided in the naval appropriation act approved April 27, 1904, for the naval station at New Orleans, La. \* \* \* It was supposed that would complete it, but it was ascertained, by reason of the increased cost of material, that that was inadequate; hence the Department could not make any contract, under the law, and now we want \$15,000, making the total cost \$36,500.

Mr. Tawney argued that, as it appeared that no work had been done under previous appropriations and as there was no law authorizing the work, it could not be considered a work in progress.

The Chairman<sup>3</sup> overruled the point of order.

**3706. A public work or object, to come within the terms of the rule, must be actually “in progress,” according to the usual significance of the words.**—On April 1, 1896,<sup>4</sup> while the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union,

<sup>1</sup> John Dalzell, of Pennsylvania, Chairman.

<sup>2</sup> First session Fifty-ninth Congress, Record, pp. 6914, 6915.

<sup>3</sup> Edgar D. Crumpacker, of Indiana, Chairman.

<sup>4</sup> First session Fifty-fourth Congress, Record, p. 3447.

Mr. Franklin Bartlett, of New York, offered an amendment for making an appropriation to copy, print, and publish the papers and manuscripts of Thomas Jefferson and Alexander Hamilton. Mr. Bartlett said that the act of August 12, 1848, made a distinct appropriation for printing and publishing the papers of Jefferson and Hamilton. That act at that time became existing law, and this amendment was a continuation of an appropriation made in 1848.

Mr. Joseph G. Cannon, of Illinois, made the point of order that, although an appropriation might have been made in 1848, the publication of this work was not a public work "in progress" within the meaning of the rule.

The Chairman<sup>1</sup> sustained the point of order.

**3707. An appropriation to complete a naval vessel on which work had long been interrupted was admitted as being for the continuation of a public work.**—On February 19, 1885,<sup>2</sup> the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill. A paragraph "for the completion of the *New York*, \$400,000," had been reached, when Mr. Joseph G. Cannon, of Illinois, made a point of order against it.

The Chairman<sup>3</sup> ruled:

Clause 3, Rule XXI, provides that—

"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress."

Unquestionably the general rule is that no appropriation is in order on a general appropriation bill unless the appropriation be authorized by previously existing law. That is the general rule. But to that general rule there is an express exception:

"Unless in continuation of appropriations for such public works and objects as are already in progress."

That is to say, if the work be a public work and it is already in progress, then there need not be any previous legislative authority for the work.

Now, the Chair must believe that the construction of this ship is a public work. The Chair also believes that it is in progress. The mere fact that this vessel, begun in 1865, is confessedly still incompletd, the Chair thinks, so far as this rule is concerned, does not show that that work is not now in progress. The fact that the actual construction is temporarily interrupted for want of appropriation or some other reason does not interfere with the idea that the work is in progress. The Chair therefore overrules the point of order.

**3708. The continuation of a public work which has long been interrupted has been held to justify an appropriation.**

**Provisions as to the method of doing a work have been held to involve legislation, even though the work itself might be authorized.**

On February 11, 1903,<sup>4</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph G. Cannon, of Illinois, proposed the following amendment:

On page 73, after line 22, insert:

"Toward the extension and completion of the Capitol building, in accordance with the original plans therefor by the late Thomas U. Walter, with such modifications of the interior as may be found

<sup>1</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>2</sup> Second session Forty-eighth Congress, Record, pp. 1913, 1914.

<sup>3</sup> Olin Wellborn, of Texas, Chairman.

<sup>4</sup> Second session Fifty-seventh Congress, Record, pp. 2049, 2050.

necessary or advantageous, and for each and every purpose connected therewith, \$500,000; and the said construction shall be made under the direction of a commission composed of three Senators, to be appointed by the President of the Senate, and three Members elect to the House of Representatives of the Fifty-eighth Congress, to be appointed by the Speaker of the House of Representatives of the Fifty-seventh Congress; and the Superintendent of the Capitol Building and Grounds, under the direction and supervision of said commission, is authorized to make contracts for said construction after proper advertisements and the reception of bids within a total sum not exceeding \$2,500,000, including the sum herein appropriated, and said Superintendent, subject to the direction and approval of said commission, shall employ such professional and personal services in connection with said work as may be necessary. Any vacancy occurring by resignation or otherwise in the membership of the commission hereby created shall be filled by the Presiding Officer of the Senate or House, according as the vacancy occurs in the Senate or House representation on said commission.”

Mr. John H. Stephens, of Texas, made the point of order that the amendment involved legislation.

After debate the Chairman<sup>1</sup> said:

Section 2 of Rule XXI provides:

“No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

The amendment offered by the gentleman from Illinois [Mr. Cannon] proposes to appropriate a certain sum for the completion of the Capitol building in accordance with the original plans and specifications and in accordance with existing law. That the construction of the building is incomplete is conceded, but the work necessary to its completion has been interrupted for a series of years. This interruption or delay, in the opinion of the Chair, does not operate so as to take this proposed amendment out of the operation of the exception to the general rule just read, which is “unless in continuation of appropriations for such public works and objects as are already in progress.” If the work incident to the completion of the building was now in progress no one would claim that this amendment would not come within the exception just mentioned.

On February 19, 1885, the House was in Committee of the Whole House on the state of the Union, considering the naval appropriation bill. A paragraph “For the completion of the *New York*, \$400,000,” had been reached when Mr. Joseph G. Cannon, of Illinois, made a point of order against it. The Chairman of the Committee of the Whole [Mr. Olin Wellborn, of Texas] ruled:

“Now, the Chair must believe that the construction of this ship is a public work. The Chair also believes that it is in progress. The mere fact that this vessel, begun in 1865, is confessedly still incomplete, the Chair thinks, so far as this rule is concerned, does not show that that work is not now in progress. The fact that the actual construction is temporarily interrupted for want of appropriation or some other reason does not interfere with the idea that the work is in progress. The Chair therefore overrules the point of order.”

In the opinion of the Chair, therefore, the amendment is not obnoxious to paragraph 2 of Rule XXI upon the ground that the appropriation is not in continuation of such public works as are already in progress.

But the point of order made by the gentleman from Texas goes further. It is claimed that the amendment is not in order because it involves new legislation or would be legislating upon an appropriation bill. It provides that the completion of the Capitol building as originally proposed shall be “under the direction of a commission composed of three Senators, to be appointed by the President of the Senate, and three Members-elect of the House of Representatives of the Fifty-eighth Congress, to be appointed by the Speaker of the House of Representatives of the Fifty-seventh Congress, and the Superintendent of the Capitol Building and Grounds,” and authorizes this commission to enter into contracts for the said construction “after proper advertisement,” and also authorizes said commission to employ such professional and personal services in connection with said work as may be necessary, and then specifies how vacancies upon said commission hereafter occurring are to be filled.

---

<sup>1</sup>James A. Tawney, of Minnesota, Chairman.

This, in the opinion of the Chair, is legislation inhibited by the last paragraph of the clause of Rule XXI which the Chair has just read.

This question, almost identical in form, was decided on February 28, 1898, by the Chairman of the Committee of the Whole House on the state of the Union, Mr. Sereno E. Payne, and for the information of the committee I will read from paragraph 513, Parliamentary Practice of the House of Representatives of the United States, page 289:

“Provided also for the appointment of a commissioner-general and other officials, with specified duties and salaries; authorized certain heads of departments to prepare exhibits under certain conditions and regulations, etc.

“Mr. Levin I. Handy, of Delaware, made the point of order that this was legislation on an appropriation bill.

“After debate, during which the act of 1897, in which the invitation of the French Government was accepted and a special commissioner was authorized to make report on the subject, was referred to as authority for the provisions of the section, the Chairman ruled:

“The Chair thinks the act of 1897 is sufficient foundation for an appropriation, but not for legislation. The Chair is unable to see wherein it authorizes the office of commissioner-general or assistant commissioner from the reading of the law by the gentleman from Illinois. The rule in regard to the continuation of public works simply authorizes an appropriation in the continuance of public works, and not the appointment of officers. \* \* \* The rule would simply authorize an appropriation, but would not authorize legislation upon the subject in a general appropriation bill. There are in this paragraph several clauses which are distinctly new legislation, and if in a paragraph any clause or provision is out of order the point of order against the whole paragraph must be sustained. Of course, after the paragraph had gone out, it would be in order to offer any provision relating to the same subject which might be in order; but when the point is raised against the whole paragraph, and the paragraph contains a clause obnoxious to the rule, the whole paragraph must go out,” etc.

The facts in the case just read being almost identical with the facts in the case now before it, the Chair is clearly of opinion, after a careful reading of the proposed amendment, that it proposes new legislation in connection with the proposed appropriation, which is not permissible under the rule, and that, therefore, the amendment is not in order.

**3709. By public works and objects already in progress are meant tangible matters like buildings, roads, etc., and not duties of officials in Executive Departments.**—On April 25, 1890,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill.

The Clerk having read the paragraph relating to salaries in the Interior Department, Mr. Joseph D. Sayers, of Texas, made a point of order that there was a provision for nine members of a board of pension appeals to be appointed by the Secretary of the Interior, at a salary of \$2,000 each, whereas the law constituting the board provided for three members only.

After debate, on the succeeding day, the Chairman<sup>2</sup> gave his ruling. He said that legislation of like character had been adopted on the bill for the past five years, but it appeared from the Record that no point of order was urged against the provision. The existing law was found in the Revised Statutes, pages 26 and 27. “Four classes of clerks and three salaries are provided for,” continued the Chairman:

The Chair understands that by statute every office in an Executive Department above the grade of a fourth-class clerk, the salary of which grade is \$1,800 per year, is provided for in terms; the office is named and salary provided for, and no question is made that to provide for any office of such higher character legislation must be had in some other way than in an appropriation bill.

<sup>1</sup> First session Fifty-first Congress, Record, pp. 3835, 3881.

<sup>2</sup> Lewis E. Payson, of Illinois, Chairman.

The provision in this bill against which the point of order is urged is embodied in the paragraph on page 76, in the following words:

“Nine members of a board of pension appeals, to be appointed by the Secretary of the Interior, at \$2,000 each.”

The members of the proposed board do not come within any of the classes of employees provided for by the Revised Statutes.

The first provision the Chair finds in reference to this subject, as was remarked during the argument on the point of order, is in the legislative appropriation act of 1884, where there was provision made for three members of the board of pension appeals to be appointed by the Secretary of the Interior, at a compensation of \$2,000 per annum. That bill became a law, and an examination of the Record during the consideration of the bill shows that no point of order was made against the provision at that time. In subsequent appropriation bills, coming down to the appropriation bill for the present fiscal year, the same provision has been carried on the different bills for a board of pension appeals, but the number constituting the board has varied in accordance with the exigencies of the service, as was shown to be necessary from time to time.

But the question here presented is whether or not, these offices only being provided for in an annual appropriation bill, the tenure of the office ending with the life of the bill—that is to say, on the 30th day of June of each year—whether the renewal of the provision in succeeding appropriation bills renders the proposition obnoxious to the point of order. That can only be determined, in the judgment of the Chair, by the consideration of clause 2 of Rule XXI. The Chair will read the entire clause:

“2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

If this provision is properly in this bill at all, the point of order being raised against it, it must be, in the judgment of the Chair, because it is connected with an “object already in progress” under the statutes of the United States. Now, it is urged in behalf of those opposing the point of order that because an appeal is allowed from the Commissioner of Pensions to the Secretary of the Interior, and because it is a physical impossibility for the Secretary of the Interior to personally perform all of the duties devolving upon the office he holds, and because it has been thought advantageous, in the performance of the duties devolving upon the head of that Department, to render the assistance in the direction indicated by this provision by a board of pension appeals in his office, as a part of the executive force of the office, that therefore it is one of the “objects” contemplated by the rule “as already in progress.” The Chair was inclined to think, on the adjournment of the House yesterday, that that point was well taken; but upon consideration, and upon such reflection as the Chair has been able to give to the matter later, the Chair is inclined to think that it can not be so held.

The rule imposes this limitation on the power of the House as to legislation on appropriation bills: That no appropriations shall be made thereby for any expenditure not previously authorized by law, unless such proposed expenditure is in continuation of a public work or an object already in progress; that is, a public work or object previously authorized by statute and not yet completed.

“Public works” contemplated, in the judgment of the Chair, clearly contemplates tangible matters, as buildings, roads, and such other matters as readily suggest themselves.

So the question only remains, Does the expression “objects already in progress” include the duties to be performed by this board during the ensuing year?

It must be remembered that these duties are only to hear and determine appeals from the Commissioner of Pensions to the Secretary, and to be settled by that officer, but, as it is practically impossible for the Secretary to do this, the performance of that duty is devolved upon this board as part of the force in the Secretary’s office.

The duties are only part of the ordinary duties of an important executive office, routine duties to be performed as the papers come to the Secretary’s office, day by day.

These duties so to be performed are not, in the judgment of the Chair, the “object in progress” contemplated by the rule.

The clause in the rule contemplates specific legislation for a certain purpose, for which provision has been made by law, but which specific legislation has not been consummated by the attainment of

the object, under the appropriation made for it, and for which the appropriation made has proved insufficient.

In such case the rule allows an appropriation on a general bill to complete the "object." But the clause does not include the ordinary performance of regular routine duty by the clerical force in a Department.

The clause against which the point is raised proposes at least six new officers, not contemplated by the statute, at a salary above that provided for in the classified service, and so is new legislation, because it is not an increase of the clerical force recognized in the Revised Statutes.

Because of this, and that the duties do not come within the clause of "objects as are already in progress," as contemplated by the rule, the Chair is impelled to hold that the clause in the bill is obnoxious to the point of order, and it will be sustained.

**3710.** On March 20, 1906,<sup>1</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For stenographic and typewriting services, to be expended by the chairman of the conference minority, \$600.

Mr. George W. Prince, of Illinois, made a point of order that there was no authority for the provision.

After debate the Chairman<sup>2</sup> said:

The Chair will inquire of the gentleman from New York if there is any resolution or authority of law existing except the fact that heretofore appropriation has been made for the item against which the point of order is raised?

Mr. Lucius N. Littauer, of New York, said:

There is no resolution. There was a request by the representatives of the minority to put it into the deficiency bill last year. The deficiency bill last year was approved by this House. It is current law to-day, standing the same, as I believe, in the same line as all the other matters that have been passed on. It is a work in progress, current law, and authorized by law.

The Chairman ruled:

The rule invoked in this instance is Rule XXI, the second section of which provides that—

"No appropriation shall be reported in any general appropriation bill or be in order as an amendment thereto, for any expenditure not previously authorized by law."

Now, without going into the matter more in detail, it has been held—was held in the third session of the Fifty-eighth Congress—as reported in page 354 of the Manual:

"The reenactment from year to year of a law intended to apply during the year of its enactment only, does not relieve the provision from the point of order."

It had been previously ruled, in the Fifty-fifth Congress, in the Fifty-seventh, and again in second session of the Fifty-eighth, as cited on page 353 of the Manual, that—

"An appropriation for an object in an annual appropriation bill makes law only for that year, and does not become 'existing law' to justify a continuance of the appropriation."

Rule XXI makes an exception in this language:

"Unless in continuation of appropriations for such public works and objects as are already in progress."

And that phrase also has been defined, as will appear, upon page 345 of the Manual, wherein it is held:

"By public works and objects already in progress are meant tangible matters, like buildings, roads, etc., and not duties in an Executive Department."

It seems to the Chair that there is no provision, resolution, or authority of law for this appropriation; and that it is not in continuation of a Government work in progress, and the Chair feels constrained to sustain the point of order.

<sup>1</sup> First session Fifty-ninth Congress, Record, pp. 4054, 4055.

<sup>2</sup> Marlin E. Olmsted, of Pennsylvania, Chairman.

**3711.** On March 20, 1906,<sup>1</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For packing boxes, \$3,500, or so much thereof as may be necessary.

Mr. Thomas W. Hardwick, of Georgia, made a point of order against the amendment.

After debate, and after the Chairman<sup>2</sup> had become satisfied that the boxes were in process of construction, he overruled the point of order, holding that the proposed appropriation was for a work in progress.

**3712.** On March 22, 1906,<sup>3</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

BOTANIC GARDEN.

For superintendent, \$1,800.

For assistants and laborers, under the direction of the Joint Library Committee of Congress, \$14,593.75.

Mr. Thomas W. Hardwick, of Georgia, made the point of order that the appropriation for assistants and laborers was not authorized by law.

Mr. Lucius N. Littauer, of New York, urged that the appropriation was in continuance of a public work or object.

The Chairman<sup>2</sup> held:

This is an item of appropriation for assistants and laborers under the direction of the Joint Library Committee of Congress. The Chair is unable to see that this stands in a different position from the appropriation for laborers in and about any of the other Departments<sup>4</sup> or buildings, and thinks that it hardly comes within the exception as to public works in progress mentioned in the second clause of Rule XXI. The Chair sustains the point of order.

**3713.** On March 23, 1906,<sup>5</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas W. Hardwick, of Georgia, made a point of order that there was no law to authorize a proposed appropriation of \$1,800 for a change teller at the office of the assistant treasurer at Chicago.

After debate the Chairman<sup>2</sup> held:

The Chair finds in section 3611 of the Revised Statutes this provision:

“There shall be employed in the office of the assistant treasurer at Chicago one cashier, at \$2,500 a year; one clerk, at \$1,800 a year; two clerks, at \$1,500 a year; one clerk, at \$1,200 a year; one messenger, at \$840, and one watchman, at \$720.”

\* \* \* Section 3611 of the Revised Statutes expressly declares the officers and employees that shall be employed in the office of the assistant treasurer at Chicago and fixes their salaries. That statute does not appear to include the two offices against which these points of order are directed, and the Chair has not been pointed to any subsequent legislation authorizing them.

The suggestion is made that the appropriation may be considered as in continuation of appropriations for a Government work already in progress, and as such within the exception found in clause 2 of

<sup>1</sup> First session Fifty-ninth Congress, Record, p. 4060.

<sup>2</sup> Marlin E. Olmsted, of Pennsylvania, Chairman.

<sup>3</sup> First session Fifty-ninth Congress, Record, pp. 4143, 4144.

<sup>4</sup> Evidently the Chair did not have in mind the laborers in the Executive Departments in Washington, who are provided for by section 169, Revised Statutes.

<sup>5</sup> First session Fifty-ninth Congress, Record, p. 4200.

Rule XXI. A similar point was raised and decided in the first session of the Fifty-first Congress upon a paragraph in an appropriation bill increasing the number of members of the Board of Pension Appeals. Mr. Payson, of Illinois, an experienced parliamentarian, then in the chair, having heard exhaustive debate and considered the question overnight, rendered an exhaustive ruling, found in section 502 of Hinds's Parliamentary Precedents, in the course of which he held that the phrase "public works" contemplates only tangible matters, such as buildings, roads, and the like, and not the ordinary duties of an executive or administrative office. The Chair thinks that the duties of a teller or clerk in receiving or disbursing money or keeping Treasury accounts do not fall within the legislative description of "public works already in progress." It may well be that the great increase of business since the designation of clerks and officers by the act of 1873 justifies or requires an increased number in the office of the assistant treasurer at Chicago, but in order to sustain an appropriation for them under the rules of this House there must first be legislation authorizing such increase. Without such previous authority for the expenditure the appropriation can not remain in the bill if the rule is invoked against it. There being no authority of law for the specific appropriations to which the point of order is urged, the Chair must sustain the point.

**3714. By continuing work or objects are meant tangible matters capable of completion within a definite time.**

**A proposition to continue the gauging of streams was held not to be authorized by the legislation creatin the Geological Survey.<sup>1</sup>**

**The gauging of streams was held not to be a continuing work within the meaning of the rule.**

On June 13, 1906,<sup>2</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read a paragraph under the head of "Geological Survey" providing an appropriation—to continue the preparation of a geological map of the United States, gauging streams, and determining the water supply.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order that there was no authority of law for the expenditure.

After debate the Chairman<sup>3</sup> held:

The Chair thinks this question has been discussed with great freedom, is ready to submit his ruling on the question involved. It is difficult for the Chair as a Member of the House, as it doubtless is for every other Member of the House, to divorce his ideas as to what the law is—the cold-blooded law—from the sentiment involved in the controversy. The Chair is of opinion that the point of order is well taken. The only authority for the enactment of the sections to which the point of order lies is that they are public works in progress. The Chair thinks that it would have been better had the gentleman from Indiana [Mr. Crumpacker] made the point of order on the different phrases instead of the lines.

"To continue the preparation of a geological map of the United States" is one proposition. "Gauging streams and determining the water supply of the United States" is a separate and distinct proposition, and in the opinion of the Chair the point of order to these different propositions rests upon different grounds. As the Chair stated in the beginning, the broad proposition that they are public works in progress rests upon two grounds; first, that there is authority of law for the work contemplated by the section, or, secondly, that even though they were never authorized by express statute, they are yet works which were begun under authority of Congress, and are therefore works in progress within the meaning, which is a well-established meaning, of the rule of this House. In order to determine whether or not there is authority of law for the first proposition, "to continue the preparation of a geological map of the United States"—

---

<sup>1</sup> See also section 3795 of this volume.

<sup>2</sup> First session Fifty-ninth Congress, Record, pp. 8415–8423.

<sup>3</sup> James E. Watson, of Indiana, Chairman.

At this point Mr. Crumpacker intervened to withdraw that portion of the point of order which related to the publication of maps.<sup>1</sup>

The Chairman then continued:

The Chair is of opinion that it is wise in the gentleman from Indiana [Mr. Crumpacker] to withdraw the point, because it rests upon an entirely different basis from the other proposition involved—gauging streams and determining the water supply. In order to determine whether or not there is authority of law for these works, either of them, recourse may be had to the statute creating the Geological Survey; defining the duties of the officer in charge, and limiting the scope of his authority. And in order that the statute may be intelligently discussed and understood it might perhaps be well to call attention to the conditions which existed with reference to the Geological Survey before the enactment of that statute. This question has been somewhat discussed by gentlemen, and the Chair will not go fully into details; but previous to that time, without any authority of law for making these surveys, appropriation bills had repeatedly contained provisions for geological surveys. For instance, in 1872 (this law having been enacted in 1879) the appropriation bill for that year contained this clause:

“For the continuation of a geological and geographical survey of the Territories of the United States, under the direction of the Secretary of the Interior.”

In 1873 there was a like provision, and again in 1875 and 1877. In other words, before the enactment of the statute of 1879, creating the office of a Geological Survey and defining the powers of the officer in charge, the appropriations for geological surveys were always confined to the Territories of the United States. Now, in 1878 the cause of the confusion which theretofore existed—and that confusion the Chair will briefly call attention to—grew out of the fact that the different Departments of the Government undertook to assume jurisdiction of various phases of geological surveys, paleontological surveys, ethnological surveys, and all that sort of thing; so that in 1879 we had a geological and geographical survey of the Territories, a geographical and geological survey of the Rocky Mountain region under the Department of the Interior, geographical surveys west of the one hundredth meridian under the War Department, and confusion resulted because of these several jurisdictions. Thereupon \* \* \*

a resolution [was] adopted by Congress as follows:  
“*Provided*, That the National Academy of Sciences is hereby requested at their next meeting to take into consideration the method and expense of conducting all surveys of a scientific character under the War or Interior Departments and the surveys of the Land Office, and to report to Congress as soon thereafter as may be practicable a plan for surveying and mapping the Territories of the United States on such general system as will, in their judgment, secure the best results at the least possible cost.”

This resolution had reference solely to the Territories of the United States. Under the foregoing provision the National Academy of Sciences recommended, almost in the exact language of the statute immediately thereafter adopted by Congress:

“That Congress establish under the Department of the Interior an independent organization, to be known as the United States Geological Survey, to be charged with the study of the geological structure and economical resources of the public domain; such survey to be placed under a Director, to be appointed by the President, etc.”

Having reference to what? Manifestly to what had been done always before in the history of the Geological Survey; manifestly to what had been called for by the resolution of Congress made to the Academy of Sciences, the Territories of the United States or the public domain. Now, the Chair desires to call attention to the specific item referred to, the gauging of stream and the determining of the water supply of the United States. When the statute creating the office of Geological Survey was passed it had in it this language, and the Chair assumes that if the Geological Survey of the United States has any power, it was conferred upon the Geological Survey by the express language of this statute, and aside from this statute it has no power. Here is the provision:

“*Provided*, That this officer shall have the direction of the geological survey and the classification of the public lands and the examination of the geological structure, mineral resources, and products of the national domain.”

Now, will the gentleman contend, or has it been contended, that the gauging of a stream comes within any of those provisions? Manifestly not, and the Chair believes that even if the language in

<sup>1</sup> On the sundry civil bill in the first session Forty-seventh Congress, a provision for the publication of the map was ruled out.

the appropriation bill was entirely different from what it is and confined to gauging of streams of the public domain, that it would not be in order. Can the gauging of streams be held to be a part of the geological survey, a classification of the public lands, the examination of the geological structure, the examination of the mineral resources, or an examination of the products of the national domain? The Chair thinks not. The Chair thinks that the only power that the Geological Surveyor has has been conferred upon him by the express language of this statute. Aside from that he has no power, and the gauging of streams is not within the provision of these several powers conferred upon him by this statute. Therefore the Chair thinks clearly the term "gauging of stream and determining the water supply" does not fall within any of the provisions of the statute creating the office of the Geological Survey and defining and limiting the power of its officers. Furthermore, in order to determine whether or not there is authority of law for the work contemplated, we have recourse to the statute passed in 1879, as the Chair has already said; and the Chair repeats that, in the opinion of the Chair, even if the language of the appropriation bill under consideration confined the gauging of a stream and the determining of the water supply of the United States to the national domain, it would yet not be in order. Why not? The Chair thinks it is obnoxious and the point of order should be sustained.

Secondly, because the authority conferred by the law upon the Director of the Geological Survey has reference only to the national domain. And the Chair thinks there has been some confusion in terms between the "national domain" and "public domain." The Chair believes that the District of Columbia is the national domain, but yet it is certainly not the public domain, because the public domain has reference only to the public lands, and "public domain" and "public lands" are terms interchangeably used, in the opinion of the Chair, and mean one and the same thing, and they have reference to land which can be distributed for settlement. The forest reserves are a part of the national domain, and yet are not a part of the public lands, because they have been disposed of. The Chair believes that the Territory of New Mexico is a part of the national domain, and yet vast portions of it which have already been distributed and are already settled are not a part of the public domain. The Chair thinks that that is a distinction which has been lately made and that it is the wise distinction to make in this instance.

Now, what is the other question involved? The only other jurisdiction for the enactment of this section is that it is a public work already in progress within the meaning of our rule. And the reason given therefor is that previous statutes heretofore enacted have contained this express provision. The rule of this House imposes this limitation on the power of the House as to legislation on appropriation bills, that no appropriation shall be made for any expenditure not previously authorized by law, unless such proposed expenditure is in continuation of a public work or object already in progress—that is, a public work or object previously appropriated for and yet not completed. But what is a public work in progress? In order to ascertain that it will be necessary to have recourse to the discussions on these specific propositions. It has been repeatedly held, and held in one instance by the gentleman from Pennsylvania [Mr. Olmsted], that the term "public work" as contemplated by the rule of the House clearly has reference to some tangible matter, as to a building, or a road, and such other matters of a like character as will readily suggest themselves.

Now, at the first session of the Fifty-first Congress this subject was taken up, and Mr. Payson, of Illinois, Chairman of the Committee of the Whole House on the state of the Union, in a decision which the Chair regards, after careful examination, was as well considered, if not better, than any other one made on this subject, held that the term "public work" had reference only to a tangible matter. The case is so clear in point and is so certainly decisive of the question involved that the Chair will take the liberty of calling the attention of the committee to it by quoting a part of it:

"If this provision," he says—and it is not necessary to state what provision, because the language is readily applicable to this provision—"is properly in this bill at all, the point of order being raised against it, it must be, in the judgment of the Chair, because it is connected with an 'object already in progress' under the statutes of the United States.

"The term 'public works,' in the judgment of the Chair, clearly contemplates tangible matters, as buildings, roads, and such other matters as readily suggest themselves.

"So the question only remains, Does the expression 'objects already in progress' include the duties to be performed by this board during the ensuing year?"

"It must be remembered that these duties are only to hear and determine appeals from the Commissioner of Pensions to the Secretary, and to be settled by that officer, but, as it is practically impos-

sible for the Secretary to do this, the performance of that duty is devolved upon this board as part of the force in the Secretary's office.

"The duties are only part of the ordinary duties of an important executive office—routine duties, to be performed as the papers come to the Secretary's office day by day.

"These duties so to be performed are not, in the judgment of the Chair, the 'object in progress' contemplated by the rule."

Then the Chair well says:

"The clause in the rule contemplates specific legislation for a certain purpose, for which provision has been made by law, but which specific legislation has not been consummated by an attainment of the object under the appropriation made for it and for which the appropriation made had proved insufficient.

"In such case the rule allows an appropriation on a general bill to complete the 'object.' But the clause does not include the ordinary performance of regular routine duty by the clerical force in the Department."

A decision more clearly in point and on all fours with the present case was rendered by Hon. Sereno E. Payne in the second session of the Fifty-fourth Congress. At that time Mr. James A. Tawney, of Minnesota, offered this amendment.

The Chair calls attention to the similarity between the amendment offered by the gentleman, in effect, to the one under consideration at this time:

"Fiber investigations: To enable the Secretary of Agriculture to continue the investigations relating to textile fibers indigenous in or adapted to the United States, including their economic growth, cleansing, and decorticating."

The Chair again calls attention to the exact language:

"Fiber investigations: To enable the Secretary of Agriculture to continue investigations"—

Investigations having theretofore been authorized by previous appropriation bills. Thereupon, Mr. Wadsworth, of New York, made the point of order, and the Chairman, Mr. Payne, held that the amendment was not in order, as the investigation was not such a tangible thing as would bring it within the exception whereby public works may be continued.

Mr. Olmsted, of Pennsylvania, held later, under a similar point of order, public works and objects to mean "tangible matters, like buildings," etc., and "that the mere appropriation of a salary does not thereby create an office so as to justify appropriations in the succeeding year."

Now, the gist of these decisions is: Was it a public object in progress at the time the appropriation was asked for? If so, it must be a tangible work, something that would be completed. An object that could be completed at some time, something with a definite, fixed object, and not a continuing something; that it must have a definite end in sight in order to be an object in progress within the meaning of this rule. Provision for gauging streams is not a tangible object. It is not a definite something that can be concluded, nor is a determination of the water supply of the United States such a definite object in progress; and because of these statements, and because of these reasons, the Chair believes that the point of order should be sustained as to these two items, the gentleman from Indiana having withdrawn the point of order on the other item, and the Chair sustains the point of order.

**3715.** On June 14,<sup>1</sup> in a later portion of the bill, the following paragraph was read:

For gauging the streams and determining the water supply of the United States, and for the investigation of underground currents and artesian wells, and the preparation of reports upon the best methods of utilizing the water resources, \$100,000.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that there was no law authorizing the expenditure.

Mr. Frank W. Mondell, of Wyoming, argued that water was in the nature of a mineral resource, and therefore that this subject was within the limits prescribed by the law creating the Geological Survey, but also that the appropriation was

<sup>1</sup>Record, pp. 8487, 8488.

authorized by the joint resolution of March 20, 1888, which directed the survey to report on the capacity of streams, etc., in the and regions, and “report to Congress as soon as practicable.”

The Chairman <sup>1</sup> held:

On yesterday the Chair in an elaborate discussion took up the identical proposition presented by the point of order this morning. On page 75 the questions having reference to the “gauging of streams and determination of the water supply” were identical with those on which the point of order is now raised. The Chair, after having carefully examined existing law on the subject, together with the joint resolution to which the gentleman from Wyoming [Mr. Mondell] this morning called the Chair’s attention, decided at that time that, in the opinion of the Chair, it was subject to the point of order. And, for the reasons then stated, without again elaborating or repeating, the Chair sustains the point of order.

Mr. Mondell having appealed, the decision of the Chair was sustained—ayes 68, noes 37.

Immediately Mr. Mondell offered the following as a new paragraph:

For measuring the capacity of streams in accordance with the joint resolution of March 20, 1888, \$100,000.”

Mr. Crumpacker made the same point of order. After debate the Chairman held:

The new paragraph offered by the gentleman from Wyoming was read, as follows:

“For measuring the capacity of streams, in accordance with the joint resolution of March 20, 1888, \$100,000.”

Recourse must therefore be had to the joint resolution of 1888 in order to determine the meaning of the proposition of the gentleman from Wyoming. That resolution reads as follows:

“*Resolved, etc.*, That the Secretary of the Interior, by means of the Director of the Geological Survey, be, and he is hereby, directed to make an examination of that portion of the and regions of the United States where agriculture is carried on by means of irrigation, as to the natural advantages for the storing of water for irrigating purposes, with the practicability of constructing reservoirs, together with the capacity of the streams, and the cost of construction and capacity of reservoirs, and such other facts as bear on the question of storage of water for irrigating purposes; and that he be further directed to report to Congress as soon as practicable the result of such investigation.”

It will be seen from this joint resolution that it is not in any sense a continuing law, but merely a direction to the then Secretary of the Interior to make certain investigations and report as soon as practicable. Now, if the then Secretary, or any Secretary of the Interior since that time, has not reported a resolution requiring him to report might be in order, possibly, under this joint resolution; but the gentleman from Wyoming does not seek to do that by this paragraph. He seeks to make it a continuing law under this joint resolution, which is not a continuing law, but which is only a resolution directed to the then Secretary of the Interior to do a certain thing.

The Chair therefore thinks very clearly that the new paragraph is subject to the point of order as being new legislation. The Chair sustains the point.

**3716. The construction of a submarine cable, although in extension of one already laid, was held not to be in continuation of a public work.**

**An appropriation made “immediately available” is a deficiency appropriation not in order in the army appropriation bill.**

**Where the law limits appropriations to two years, a provision that an appropriation shall remain available until expended is in violation of existing law.**

---

<sup>1</sup>James E. Watson, of Indiana, Chairman.

**All points of order should be stated before a decision is made as to any.**

On January 23, 1904,<sup>1</sup> the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the following paragraph was read:

Submarine cable, Sitka to Fort Liscum, Alaska: For the purchase, installation, operation, and maintenance of a submarine military cable for connecting the headquarters Department of the Columbia with military garrisons in Alaska, said cable to extend from Sitka, Alaska, to Fort Liscum, Alaska, to be immediately available and to remain available until expended, \$321,580.

Mr. Henry W. Palmer, of Pennsylvania, made the point of order that the construction of the cable was not authorized by existing law.

Mr. Oscar W. Underwood, of Alabama, made the point of order that the words "to be immediately available" constituted the proposed appropriation a deficiency, not in order on this bill.

Mr. Elmer J. Burkett, of Nebraska, proposed, after these points of order should be decided, to raise the question that the language "to remain available until expended" was in violation of the law limiting appropriations to two years.<sup>2</sup>

The point of order having been stated, after debate, the Chairman<sup>3</sup> held:

The Chair is ready to rule upon the points of order. Rule 21, second paragraph, provides that—"No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto."

Now the Chair has not been pointed to any law authorizing the laying of any submarine cable of which this cable is to be a continuation, nor to any appropriation of which this proposed appropriation will be in continuation. Upon its face this appears to be an entirely new appropriation for an entirely new cable, and the situation is much the same as if it appropriated for the construction of a trans-continental railroad for the transportation of troops without previous authority of law for its construction. Furthermore, as suggested by the point made by the gentleman from Alabama, the language of the paragraph makes this appropriation "immediately available," and in the point made by the gentleman from Nebraska it is "to remain available until expended," although this is the army appropriation bill "for the fiscal year ending June 30, 1905." Upon consideration of all these matters, the Chair holds that this paragraph is not in order upon this bill.

**3717. An appropriation to continue the marking of a boundary line of the nation is in continuation of a public work.**—On January 29, 1904,<sup>4</sup> the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union when this paragraph was read:

To enable the Secretary of State to mark the boundary, and make the surveys incidental thereto, between the Territory of Alaska and the Dominion of Canada, in conformity with the award of the Alaskan Boundary Tribunal and existing treaties, \$100,000, to remain available until the close of the fiscal year 1905.

<sup>1</sup> Second session Fifty-eighth Congress, Record, pp. 1081, 1082.

<sup>2</sup> Rev. Stat., sections 3690, 3691; with exceptions, Supp. Rev. Stat. (second edition), Vol. I, pp. 18, 51, 375.

<sup>3</sup> Marlin E. Olmsted, of Pennsylvania, chairman.

<sup>4</sup> Second session Fifty-eighth Congress, Record, p. 1383.

Mr. James Hay, of Virginia, having raised a question of order, the Chairman<sup>1</sup> held:

The Chair is of the opinion that this appropriation, which is to defray the expense of marking the boundary and making the necessary surveys between the Territory of Alaska and the Dominion of Canada, is in continuation of a tangible public work already begun. The Commission was created by authority of law for the purpose of defining that boundary line, in accordance with a treaty between the United States and Great Britain, and an appropriation was made for the purpose of ascertaining the exact boundary. Volume 32, page 1138, Statutes at Large, provides for or authorizes the beginning of the work of marking this boundary. The paragraph against which the gentleman has made the point of order is in continuation of that public work which is to mark the boundary line as ascertained by the Commission, and the Chair therefore overrules the point of order.

**3717a. An appropriation to complete a list of claims was held to be in continuation of a public work or object.**—On December 13, 1902,<sup>2</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union when Mr. James R. Mann, of Chicago, reserved a point of order on the following paragraph:

To enable the Clerk of the House to prepare and complete a digested summary and alphabetical list of private claims presented to the House of Representatives from the Fifty-second to the Fifty-seventh Congress, inclusive, 3 clerks, at \$1,600 each, during the fiscal year 1903; in all, \$4,800. And said work shall be completed and ready to be printed on or before July 30, 1904.

In debate it was explained that the preceding bill, now the current law, carried the same provision, and that the work was going on.

The Chairman<sup>3</sup> held:

The Chair finds that the statutes on page 582 are exactly as have been read by the gentleman from Pennsylvania, and that under Rule XXI of the House this is clearly a continuation of a public work already in progress, and hence the Chair overrules the point of order.

**3718. An appropriation for the printing of a series of opinions indefinite in continuance is not for such continuance of a public work as justifies placing it in a general appropriation bill.**—On February 19, 1907,<sup>4</sup> the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

To complete the work of printing and binding the opinions of assistant attorneys-general for the Post-Office Department, \$10,000.

Mr. Arthur P. Murphy, of Missouri, made the point of order that the appropriation was not authorized by law.

Mr. Jesse Overstreet, of Indiana, said in explanation:

In a letter of the Department to the chairman of the committee, under date of January 21, 1907, the Department made this explanation:

“The act making appropriations for the service of the Post-Office Department for the year ended June 30, 1904, embraced an item appropriating \$5,000 for”—

Here are the quotation marks: “Printing and binding the opinions of the Assistant Attorney-General for the Post-Office Department.”

---

<sup>1</sup>James A. Tawney, of Minnesota, Chairman.

<sup>2</sup>Second session Fifty-seventh Congress, Record, p. 282.

<sup>3</sup>Adin B. Capron, of Rhode Island, Chairman.

<sup>4</sup>Second session Fifty-ninth Congress, Record, pp. 3371, 3372.

And then the letter goes on:

“Of that appropriation \$4,208.75 was expended in printing and binding two volumes, covering opinions of this office from the date of its establishment, namely, June 23, 1873, to March 7, 1892, both inclusive. To complete the work of compiling, printing, and binding these opinions there remain to be covered the period from March 7, 1892, to the present time, being nearly fifteen years; and it is believed that if performed with the same economy which characterized the previous work, this can be accomplished at an expenditure of about \$10,000, including the preparation and printing of a suitable digest.”

Mr. Chairman, that is the authority appropriating \$5,000 in the act of June 30, 1904, for this work, and this item of appropriation is for the completion of that service.

The Chairman<sup>1</sup> made inquiry as to whether the proposed appropriation was for completion of work for the period covered by the original appropriation, or for continuing work which would be indefinite in its continuation. And it appearing that the work would be indefinite in continuance, he sustained the point of order.

**3719. The continuation of a scientific investigation by a Department of the Government does not constitute a work in progress, but must be appropriated for under authorization of prior law.**—On January 30, 1897,<sup>2</sup> the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union.

Mr. James A. Tawney, of Minnesota, offered this amendment:

Fiber investigations: To enable the Secretary of Agriculture to continue the investigations relating to textile fibers indigenous in or adapted to the United States, including their economic growth, cleansing, and decorticating, preparatory to manufacture; the testing machines and processes for said cleansing and decorticating; for the purchase of material for said tests; for the purchase of fiber plants and seeds for distribution, propagation, and experiment, and for the labor and expenses incident thereto; and for traveling expenses in connection with said duties, \$5,000.

Mr. James W. Wadsworth, of New York, having made a point of order against the amendment, the Chairman<sup>3</sup> having ascertained that there had been established no experimental farm or anything of that nature in connection with the work, held that the amendment was not in order, as the investigation was not of such a tangible nature as would bring it within the exception relating to public works and objects already in progress.

Later, Mr. Tawney having presented section 526 of the Revised Statutes to the attention of the Chair:

The Commissioner of Agriculture shall procure and preserve all information concerning agriculture which he can obtain by means of books and correspondence, and by practical and scientific experiments, accurate records of which experiments shall be kept in his office, by the collection of statistics, and by any other appropriate means within his power; he shall collect new and valuable seeds and plants; he shall test, by cultivation, the value of such of them as may require such tests; shall propagate such as may be worthy of propagation, and shall distribute them among agriculturists.

The Chairman<sup>3</sup> ruled:

The Chair will state that if the attention of the Chair had been called to the statute the gentleman has just read before ruling on the amendment when first presented, the ruling would have been different. The Chair thinks that clearly the statute authorizes the work suggested in the amendment, and therefore overrules the point of order and will submit the question to the committee.

<sup>1</sup> Frank D. Currier, of New Hampshire, Chairman.

<sup>2</sup> Second session Fifty-fourth Congress, Record, pp. 1356, 1357, 1358.

<sup>3</sup> Sereno E. Payne, of New York, Chairman.

**3720. An appropriation to continue the duties of a commission was held not to be the continuation of a public work.**—On January 29, 1904,<sup>1</sup> the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Ebenezer J. Hill, of Connecticut, raised a question of order against this paragraph:

For expenses of the Commission on International Exchange, appointed under the provisions of the sundry civil act of March 3, 1903, to bring about a fixed relationship between gold-standard and silver-using countries, \$100,000.

It appeared in the debate that the sundry civil law passed in the last preceding session of Congress contained this paragraph:

To enable the President to cooperate through diplomatic channels with the Governments of Mexico, China, Japan, and other countries for the purpose set forth in the message of the President and accompanying notes submitted to Congress January 29, 1903, and printed as Senate Document No. 119, second session Fifty-seventh Congress, \$25,000.

And it was urged that the appropriation now proposed was for the continuation of a public work or object.

After debate the Chairman<sup>2</sup> held:

The Chair desires to call to the attention of the committee the language of this paragraph against which the point of order has been made; for it seems to the Chair from that language that the appropriation is not in continuation of such a public work or object in progress as the second clause of Rule XXI contemplates:

“For expenses of the Commission on International Exchange, appointed under the provisions of the sundry civil act of March 3, 1903, to bring about a fixed relationship between gold-standard and silver-using countries, \$100,000.”

The paragraph does not state specifically what these expenses are; but in view of the language of the act, which the Chair has before it, creating or authorizing the President to create the commission referred to, it is reasonable to infer that this appropriation is for the payment of salaries and other expenses of employees of the Government—that is, employees at large, as contradistinguished from employees of the Departments, and duties, too, that are not defined by law. In the opinion of the Chair it is difficult to see how the paragraph can be sustained under the provision of Rule XXI, to which the Chair has referred. That rule reads as follows:

“No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress.”

The question is whether this Commission, the purpose of its creation and the continuation of its duties, is such a public object already in progress as this rule intends. On this question the uniform ruling or holding of previous Chairmen has been that public works or objects already in progress authorizing appropriations not provided for by law had to be of a tangible, substantial nature, like the erection of buildings, construction of roads, etc.

The Chair finds in the Book of Precedents a decision on a very similar state of facts; the decision was made by Mr. Payson, of Illinois, who then occupied the chair:

“On April 25, 1890, the House was in Committee of the Whole House on the state of the Union, considering the legislative, executive, and judicial appropriation bill.

“The Clerk having read the paragraph relating to salaries in the Interior Department, Mr. Joseph D. Sayers, of Texas, made a point of order that there was a provision for nine members of a Board of Pension Appeals, to be appointed by the Secretary of the Interior, at a salary of \$2,000 each, whereas the law constituting the Board provided for three members only.

---

<sup>1</sup>Second session Fifty-eighth Congress, Record, pp. 1381–1383.

<sup>2</sup>James A. Tawney, of Minnesota, Chairman.

“After debate, on the succeeding day the Chairman gave his ruling. He said that legislation of like character had been adopted on the bill for the past five years, but it appeared from the Record that no point of order was urged against the provision. The existing law was found in the Revised Statutes, pages 26 and 27. ‘Four classes of clerks and three salaries are provided for,’ continued the Chairman.”

After reciting the law providing for a less number on the Board of Pension Appeals, the Chair said:

“If this provision is properly in this bill at all, the point of order being raised against it, it must be, in the judgment of the Chair, because it is connected with an ‘object already in progress’ under the statutes of the United States. Now, it is urged in behalf of those opposing the point of order that because an appeal is allowed from the Commissioner of Pensions to the Secretary of the Interior, and because it is a physical impossibility for the Secretary of the Interior to personally perform all of the duties devolving upon the office he holds, and because it has been thought advantageous, in the performance of the duties devolving upon the head of that Department, to render the assistance in the direction indicated by this provision by a board of pension appeals in his office, as a part of the executive force of the office, that therefore it is one of the ‘objects’ contemplated by the rule ‘as already in progress.’ The Chair was inclined to think, on the adjournment of the House yesterday, that that point was well taken; but upon consideration, and upon such reflection as the Chair has been able to give to the matter later, the Chair is inclined to think that it can not be so held.

“The rule imposes this limitation on the power of the House as to legislation on appropriation bills: That no appropriations shall be made thereby for any expenditure not previously authorized by law, unless such proposed expenditure is in continuation of a public work or an object already in progress—that is, a public work or object previously authorized by statute and not yet completed.

“‘Public works’ contemplated, in the judgment of the Chair, clearly contemplates tangible matters, as buildings, roads, and such other matters as readily suggest themselves.

“So the question only remains, Does the expression ‘objects already in progress’ include the duties to be performed by this board during the ensuing year? The Chair held it did not, and sustained the point of order.”

This decision has been repeatedly cited and followed in like and similar cases, and since the provision against which the gentleman from Connecticut [Mr. Hill] has made the point of order merely provides for continuing the duties of this Commission for another year, it does not, in the opinion of the Chair, appropriate for the continuation of such an “object already in progress” as the rule contemplates. Therefore the Chair sustains the point of order.

**3721. The continuation of an investigation of materials, coal, etc., was held not the continuation of a public work.**

**A proposition to investigate coal, etc., the property of the United States, and this only, was held to be authorized by the law creating the Geological Survey.**

On June 14, 1906,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph:

For the continuation of the investigation of the structural materials of the United States (stone, clays, cements, etc.), under the supervision of the Director of the United States Geological Survey, to be immediately available, \$50,000.

Mr. John W. Weeks, of Massachusetts, made the point of order that there was no legislation authorizing, the appropriation, and that it was not a continuing work.

After debate, the Chairman<sup>2</sup> held:

The Chair will state that, in ruling on this proposition, the ruling is made regretfully. The Chair believes this to be a very meritorious measure, and one that ought to be enacted into law in order that it may be properly appropriated for. The Chair is constrained, however, to sustain the point of order

<sup>1</sup> First session Fifty-ninth Congress, Record, pp. 8487–8496, 8500.

<sup>2</sup> James E. Watson, of Indiana, Chairman.

on the legal question involved, for the following reasons: In the opinion of the Chair a good part of the difficulty has arisen because of a confusion of terms. The two terms "the United States" and the "national domain" have been greatly confused, in the opinion of the Chair, not only by the House but by the Department and the Geological Survey itself in times past. If we read these lines carefully, we see here this language: "For the continuation of the investigation of structural materials of 'the United States.'" Now, what does that mean? Does that mean structural material belonging to the United States? In the opinion of the Chair it does mean that; and therefore can have reference only to the structural materials on the national domain, because they alone belong to the United States. But the construction that gentlemen who are the proponents of this proposition place upon it is, that it means all materials belonging to everybody in the United States, throughout the whole United States. Now, the Chair desires to call attention to the fact that the gentleman from Ohio has said, that the gentleman from Illinois [Mr. Madden] has said, and that all the other gentlemen who have participated in the discussion have said, that this investigation does not have reference to the materials found upon the national domain alone, therefore owned by the United States, but that it does have reference to the material of private individuals anywhere in the United States. The Chair desires, therefore, to call attention to the organic act conferring power upon the Geological Survey and defining the authority of the Geological Surveyor. The Chair desires especially to call attention to these words, and wants the committee to hear:

"And that the Director and members of the Geological Survey shall have no personal or private interest in the lands or mineral wealth of the region under survey, and shall execute no survey or examination for private parties or corporations."

There is an express prohibition. And why was it put in there? Manifestly because under this original act the only materials of this kind that were to be investigated were the materials of the United States—that is, belonging to the United States. In other words, materials that were on the public domain or the national domain. Therefore when this organic act was passed, it said squarely that only those materials which belonged to the United States should be investigated; but not only that, but that no materials belonging to private individuals or to corporations should be investigated; an express prohibition, an express inhibition, and therefore, in the opinion of the Chair, the point of order would have to be sustained on that ground alone.

In the further opinion of the Chair, this point of order should be sustained because it is not a public work in progress, as the Chair believes. The Chair believes it is not one of those fixed and definite objects that can be completed, but would go on forever without completion.

"Stones, clays, cements, etc."

In that connection, the Chair might incidentally remark that cement is not a structural material of the United States, but is a compound, and the Chair thinks clearly that this would have reference only to those articles of building material, structural material, found in the earth. But be that as it may, the Chair is of the opinion that it is not one of those fixed and definite objects within the meaning of the law, within the meaning of our rules, that can be appropriated for.

Now, it is quite evident that Congress has not heretofore believed it to be one of those continuing objects, and it is quite evident that the gentlemen who propose this item do not believe it to be a continuing work in progress within the meaning of the law. Last year in the sundry civil appropriation bill this clause was embodied:

"For the continuation and completion on or before July 1, 1906."

Now, the Chair does not believe that that precludes another appropriation, but that it is simply descriptive of that act, and therefore the Chair calls attention to it only for this purpose, that Congress at that time probably thought it was a work which might be completed. But now gentlemen come up with the statement that it is not a work that can be completed for the \$7,500 then asked for, but ask for a further appropriation of \$50,000, showing conclusively, in the opinion of the Chair, that the gentlemen who framed this bill believed it was not a work which could be completed, but that it would go on indefinitely and with an increasing appropriation. Now, it was evidently the intention of the Congress that framed this law originally to have the structurals of the United States, or those mentioned in the succeeding paragraph, coal, and so forth, belonging to the United States, to be investigated, and not belonging to private individuals, because it says squarely in the organic act that no investigation or examination shall be made for private parties or corporations, evidently having in view that only those

materials which belong to the United States should be investigated by the United States and at the expense of the United States. Therefore the Chair is clearly of the opinion that this is obnoxious to the rule; and, regardless of the merits of the proposition, the Chair is compelled to sustain the point of order.

\* \* \* "National domain" and "public lands" are not convertible terms; but the Chair believes that the national domain has a well-defined meaning, and does not mean the whole United States. The gentleman from Pennsylvania yesterday argued that the "national domain" means the whole United States and all the States of the United States. The Chair has an entirely different opinion from that.

Mr. Richard Bartholdt, of Missouri, having appealed, the decision of the Chair was sustained without division.

Thereupon, Mr. George W. Norris, of Nebraska, offered the following as a new paragraph:

For the continuation of the investigation of structural materials belonging to the United States, such as stone, clays, cement, etc., under the supervision of the Director of the United States Geological Survey, to be immediately available, \$100,000.

Mr. James A. Tawney, of Minnesota, made the point of order that the same objection would apply as to the paragraph just ruled out.

After debate the Chairman ruled:

As everyone who has kept pace with this legislation understands, there are several very fine distinctions constantly being raised by these points of order on these paragraphs. The Chair is of the opinion that the amendment offered by the gentleman from Nebraska is in order and not subject to a point of order. That paragraph reads as follows:

"For the continuation of investigation of structural materials belonging to the United States"

Having reference to the materials on the national domain, which alone belongs to the United States, and therefore brings it within the act, in the opinion of the Chair. Further it says:

"For the continuation of the investigation of structural materials belonging to the United States, such as stone, clays, cement, etc."

Heretofore the appropriation was for these materials of the United States. Now, the Chair does not know, as a matter of fact, but what there are in progress investigations and examinations of the structural materials on the public domain belonging to the United States, but taking into consideration what is meant now by the national domain, the public domain, the Chair is not inclined to hold that the structural materials to be investigated on the national domain are of such an extensive nature that it is not a work of progress to be completed within our rule. \* \* \* The Chair will state to the gentleman from Iowa [Mr. Smith] that the Chair would be much better satisfied with the amendment from a legal standpoint if it contained the express prohibition, as the Chair suggested in the other ruling, that none of this investigation was to be conducted for the benefit of private individuals, yet the language of the present amendment is not such, the Chair thinks, as to enable him to decide that it is the intention to conduct these examinations for the benefit of private individuals or private corporations. \* \* \* The Chair stated squarely that, in his opinion, these investigations had not been exclusively for private individuals, but a portion of them may have been for the United States, and of materials belonging to the United States, on the public domain, and that therefore, so far as this amendment was concerned, it might relate to them—a continuation of the investigation of those particular items which had heretofore been investigated. \* \* \* The Chair overrules the point of order.

Soon thereafter the Clerk read this paragraph of the bill:

For the continuation of the analyzing and testing of the coals, lignites, and other fuel substances of the United States, in order to determine their fuel values, and so forth, under the supervision of the Director of the United States Geological Survey, to be immediately available, \$100,000.

Mr. Lucius N. Littauer, of New York, made the point of order that the appropriation was not authorized by existing law, and that it was obnoxious to the law

of the last appropriation act, which provided for "completion at St. Louis, Mo., on or before July 1, 1906."

The Chairman<sup>1</sup> said:

The present occupant of the chair is unable to differentiate between this paragraph and the preceding paragraph which was ruled out on the point of order. Therefore the Chair sustains the point of order.

Mr. Franklin E. Brooks, of Colorado, thereupon offered the following as a new paragraph:

For the continuation of the analyzing and testing of the coals, lignites, and other minerals and fuel substances belonging to the United States, in order to determine their fuel value, and so forth, under the supervision of the Director of the United States Geological Survey, to be immediately available, \$100,000.

Mr. Walter I. Smith, of Iowa, made a point of order against the amendment.

The Chairman<sup>1</sup> held:

The organic act, which has already been referred to and quoted, provides for the examination of the geological structure and mineral resources and products of the national domain. It seems to the present occupant of the chair that that language is broad enough to cover fuel substances belonging to the United States. The Chair therefore overrules the point of order.

**3722. An appropriation for continuing the work of extending the foreign market of certain products was held not in order as for the continuation of a public work.**—On April 30, 1906,<sup>2</sup> the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the paragraph making appropriation for the Bureau of Animal Industry was read, including lines as follows:

And the Secretary of Agriculture may use so much of this sum as he deems necessary for promoting the extension and development of foreign markets for dairy and other farm products of the United States, and for suitable transportation of the same; and such products may be bought in open market and disposed of at the discretion of the Secretary of Agriculture, and he is authorized to apply the moneys received from the sales of such products toward the continuation and repetition of such experimental exports.

Mr. Edgar D. Crumpacker, of Indiana, made a point of order, saying:

The point of order is based upon the idea that the provision changes existing law. This paragraph has been carried in a number of agricultural appropriation bills, but from its nature it is temporary—not permanent, not continuing. It applies to the immediate appropriation. The paragraph appropriates upward of a million and a half dollars to be used during the next fiscal year for the purposes enumerated, so that it is necessarily and essentially a provision limiting and confining the appropriation, or authorizing the appropriation for this specific purpose. It applies of necessity to the appropriation contained in the paragraph.

Now, I concede that where there is legislation of a permanent and continuing character contained in an appropriation bill it is just as much law, when enacted and approved, as if it were contained in an independent bill, and subsequently it may become the basis for appropriations in general appropriation bills under the rules of the House. On the other hand, it is settled by a large number of precedents in this House that a provision of this kind, carried from year to year in an appropriation bill, is only for the fiscal year. It only makes law for that one year, and does not furnish the basis, under the rules of the House, to authorize an appropriation on the same subject for the next year.

---

<sup>1</sup>James R. Mann, of Illinois, Chairman.

<sup>2</sup>First session Fifty-ninth Congress, Record, pp. 6142–6144.

After debate the Chairman<sup>1</sup> ruled:

In the judgment of the Chair the proposition contained in this paragraph is not a continuation of a public work within the language and intent of the rule of the House, and there being no law authorizing the provision, that contained in previous annual appropriation bills being merely temporary, the Chair holds that this paragraph does involve a change in existing law, and is therefore subject to the point of order, and the Chair sustains the point of order.

**3723. By a broad construction of the rule, the principle of which is not generally applied in other matters, an appropriation for a new and not otherwise authorized vessel of the Navy is held to be for continuance of a public work.**

**By an exceptional ruling a legislative provision increasing the enlisted force of the Navy was admitted on an appropriation bill. (Footnote.)**

On February 26, 1887,<sup>2</sup> the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill, when Mr. Joseph D. Sayers, of Texas, offered an amendment authorizing the construction of "two swift double-bottomed steel cruisers" and making an appropriation therefor.

Mr. William S. Holman, of Indiana, made the point of order that there was no law authorizing the appropriation.

After debate the Chairman<sup>3</sup> cited the rule and exception, and said:

That is to say, if the work be a public work, or if the object is a public object, and it is already in progress, then there need not be any previous legislation authorizing it. The Chair believes that the construction of a navy is a public object or a public work, and the language of the bill which we have been considering, and the appropriation made at the last session, show that the construction of the Navy is in progress. It may be said, also, that the proposed amendment providing money for the construction of vessels does not change existing law, and is not prohibited by law.

It is very agreeable to the present occupant of the chair to be able to refer to a precedent bearing upon the point of order now raised. In the Forty-sixth Congress (Mr. Carlisle in the chair) it was decided "that appropriations for public works and objects" already in progress could be included in general appropriation bills or could be inserted as amendments; and that the word "objects" meant something in addition to the word "works," and must be held to include the public Departments of the Government, and the civil, military, and naval establishments recognized by law and supported by the Government.

The Government has undertaken to maintain, and is annually maintaining, a naval establishment, and under the rule appropriations may be made for it in a general appropriation bill, and such has always been the practice until last session, when appropriations for the construction of ships for the Navy and armaments for them were made in a separate bill. Before the last session such appropriations were made in the naval appropriation bill, under the rule exactly as it now is.

There is no law prescribing the number of ships that shall constitute the Navy or the number of guns they shall carry. Those matters depend entirely on the amount of money appropriated for those purposes, just as the number of clerks and other employees in the Departments depend upon the appropriations made. \* \* \* This decision allows an important amendment to be offered, but it gives to the Committee of the Whole the right to pass upon this interesting question, and an opportunity to say whether it is in favor of increasing the Navy or not.<sup>4</sup>

<sup>1</sup> David J. Foster, of Vermont, Chairman.

<sup>2</sup> Second session Forty-ninth Congress, Record, pp. 2336, 2337.

<sup>3</sup> James B. McCreary, of Kentucky, Chairman.

<sup>4</sup> A similar ruling was made in the Fifty-first Congress (Congressional Record, first session Fifty-first Congress, p. 3222), and also in the Fifty-fifth Congress (see Congressional Record, second session Fifty-fifth Congress, p. 3459). In each of these cases the ruling was based on that of 1887. It is easy to see that this ruling is entirely out of harmony with the decisions relating to dry docks, light-houses,

**3724.** On May 17, 1902,<sup>1</sup> the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Oscar W. Underwood, of Alabama, raised the question of order that the following paragraph involved a change of law:

That the appointment of 500 additional cadets at the Naval Academy, Annapolis, Md., under such detailed rules and regulations as the Secretary of the Navy shall prescribe, is hereby authorized, such appointments to be made as follows:

On May 19,<sup>2</sup> after debate, the Chairman<sup>3</sup> held:

The Chair does think that it is the duty of the Chairman to decide points of order as they appear and to disregard entirely his individual hopes and desires in reference to the subject-matter under consideration. And the present occupant of the chair has always been so guided in deciding points of order. On more than one occasion he has been obliged to rule against his inclinations and desires. The Chair also thinks it is the duty of members of the committee and the House to sustain the Chair when they believe he is right. The Chair thinks there have been occasions when that has not been followed.

light-house tenders, etc., and the principle on which it is based, if extended, would practically render useless the rule forbidding appropriations not authorized by previous law to be included in general appropriation bills. In one instance, indeed, the principle was extended to justify an outright legislative provision. On February 19, 1895 (third session Fifty-third Congress, Record, p. 2406), the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Joseph D. Sayers, of Texas, had on the preceding day made a point of order on a provision of the bill providing that the Secretary of the Navy should be authorized to enlist "as many additional seamen as in his discretion he may deem necessary, not to exceed 2,000."

The Chairman (Joseph H. O'Neil, of Massachusetts) said:

"The point of order is made that this changes existing law and does not retrench expenditure.

"The rulings which have been made from time to time on points of order raised on the naval appropriation bill have established a pretty clear line of precedents; and whatever may have been the opinion or feeling of the Chair on the original proposition, yet, in pursuance of the practice of the House, he feels bound to follow the precedent established by previous presiding officers. So that when a provision was offered to a bill providing for an additional ship to the Navy, notwithstanding the fact that it added to the Navy and increased the expenditure, it has been uniformly held that it was in continuation of existing works or objects already in progress, and was not subject to the point of order.

"Now, the point is made that this provision in the bill is obnoxious to Rule XXI, and many instances have been cited in support of that position. For instance, it is claimed that the Committee on Military Affairs, if this provision shall be held in order, might properly bring in an amendment or a provision in their bill increasing the military strength of the United States; and yet it seems to the Chair that a moment's reflection will convince any person that the Military Committee and the Naval Committee do not stand on the same footing in that regard.

"For instance, the Appropriations Committee of this House has charge of two bills which carry large amounts of money for the maintenance of the Army and the defenses. The fortifications bill carries, for instance, the appropriations for the coast and harbor defenses, and the sundry civil bill carries also large appropriations for the maintenance of the army posts and other expenses of the Army, and the Military Committee brings in the bill providing for the maintenance of the military force of the United States. Now, it would seem to the Chair that under the rulings which have been made it is entirely competent for the committee to bring in a provision in continuation of any public work or object already in progress; that when it is admitted, as it has been by the practice of the House, that it is competent to bring in a provision authorizing the construction of a new ship, it carries with it also the right to maintain that ship, or to continue and maintain work already in progress. This seems to the Chair to be very clear, and after giving a great deal of consideration to the question he is obliged to overrule the point of order."

Mr. Sayers having appealed, the decision of the Chair was sustained by a vote of 143 yeas to 37 noes.

<sup>1</sup>First session Fifty-seventh Congress, Record, p. 5613.

<sup>2</sup>Record, pp. 5635-5637.

<sup>3</sup>James S. Sherman, of New York, Chairman.

The ruling in reference to the construction of a battle ship is one which the present occupant of the chair has heretofore followed, although he did not originally make it, and is frank to say that, although he has great respect and regard for the gentleman who did make it, he doubts, if he had been in the chair when the question arose, if he would have made it. He has never been in sympathy with it. But that was a provision to increase the number of battle ships when the number was not specifically defined by statute. Likewise, so far as the Chair has been able to ascertain from a hurried reading and inspection of the statutes, there was no specific provision as to the number of seamen. Both of these questions, then, were decided upon the broader ground whether or not it was increasing the general naval establishment.

In the case now presented there is a statute, section 1513, which reads:

“There shall be allowed at said Academy one cadet midshipman for every Member and Delegate of the House of Representatives, one for the District of Columbia, and ten appointed annually at large.”

There is a specific, general statutory provision as to the number of cadets at the Naval Academy. The amendment to which the gentleman from Alabama has raised the point of order changes the number of cadets and changes existing law, which is clearly and unequivocally against the provision of the rule, section 2 of Rule XXI, which provides: “Nor shall any provision changing existing law be in order on any general appropriation bill.” The Chair therefore sustains the point of order.

**3725. An appropriation for a new vessel for use as a light-house tender is not admissible as in continuation of a public work or object.**—On June 21, 1886,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

The following paragraph having been read—

For building and completing a new steam tender for service in the Fourth light-house district, \$68,300.

Mr. Benton McMillin, of Tennessee, made the point of order that the construction of the tender was not authorized by law.

It was urged in opposition to the point of order that the new vessel was for the purpose of taking the place of an old one already in the service; thall, the general law authorized the administration of the service and that the new boat was necessary to that administration, and that in fact the construction of the new boat was the continuation of a public work already in progress.

The Chairman<sup>2</sup> ruled:

Under clause 3 of Rule XXI no appropriation for any expenditures not previously authorized by law, unless in continuation of appropriations for such public works as are already in progress, can be made. Under that clause of the rule the Chair sustains the point of order.

Mr. Cannon having appealed, the committee sustained the ruling of the Chair.

**3726.** On February 13, 1901,<sup>3</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read this paragraph:

Tender for the engineer of the Seventh light-house district: For constructing, equipping, and outfitting, complete for service, a new steam tender for construction and repair service in the Seventh light-house district, \$85,000. And the Light-House Board is authorized to employ temporarily at Washington not exceeding three draftsmen, to be paid at current rates, to prepare the plans for the tenders for which appropriations are made by this act; such draftsmen to be paid from and equitably charged to the appropriations for building said vessels; such employment to cease and determine on or before the date when, the plans for such vessels being finished, proposals for building said vessels are invited by advertisement.

<sup>1</sup>First session Forty-ninth Congress, Record, pp. 5977, 5979.

<sup>2</sup>John H. Reagan, of Texas, Chairman.

<sup>3</sup>Second session Fifty-sixth Congress, Record, pp. 2377–2380.

Mr. Marlin E. Olmsted, of Pennsylvania, made a point of order against the paragraph.

After debate the Chairman<sup>1</sup> held:

The Chair desires to call the gentleman's attention to a decision made by a Chairman of the Committee of the Whole a year ago on the sundry civil bill when the proposed appropriation was \$20,000, to be immediately available, for the purchase or construction of one small steamer for the Coast and Geodetic Survey. The point of order was made against that, and the gentleman from Pennsylvania [Mr. Dalzell], who was in the chair, sustained the point of order. \* \* \* The Chair is constrained to follow the decision rendered by Judge Reagan in the Forty-ninth Congress, backed up, as the Chair thinks, and supported by the decision of the Chair, the gentleman from Pennsylvania [Mr. Dalzell], on the sundry civil bill one year ago. Therefore the Chair will sustain the point of order.

**3727. The construction of a new vessel for the Coast Survey was held not to be the continuation of a public work or object.**—On May 4, 1900,<sup>2</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the following was read under the head of "Coast and Geodetic Survey:"

For rebuilding and refitting the steamer *Bache*, to be immediately available, \$60,000.

For purchase or construction of one small steamer, to be immediately available, \$20,000.

Mr. Alston G. Dayton, of West Virginia, made the point of order.

After debate the Chairman<sup>3</sup> held:

The law in respect to this matter seems to be in section 4686 of the Revised Statutes, which reads: "The President is authorized, for any of the purposes of surveying the coast of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of this title."

The Chair assumes that the steamer *Bache*, referred to in lines 14 and 15, is a public vessel in actual service, which the President has detailed for the purposes of this Survey. If that assumption be correct, then it seems to the Chair the point of order is not well taken, as the rebuilding and refitting of the steamer is simply the continuance of a public work already begun.

There is not, however, so far as the Chair is advised, any existing law which would authorize the purchase or construction of a steamer by the Coast and Geodetic Survey. Nor does it seem to the Chair that this Survey stands upon the same basis as the Navy, or that the same argument which would authorize an appropriation for the building of a battle ship applies to a department such as the Coast and Geodetic Survey, which has no navy of its own, which has no vessels at all except those which are detailed by the President under section 4686. The Chair therefore overrules the point of order so far as lines 14 and 15 [relating to the *Bache*] are concerned, but sustains the point of order so far as lines 16 and 17 [relating to new steamer] are concerned.

**3728. An appropriation for a new light-house not authorized by existing law was held not to be in continuation of a public work.**—On June 21, 1886,<sup>4</sup> the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

The following paragraph had been reached:

Lubec Narrows light station, Maine: For establishing a light to guide through the dredged channel in Lubec Narrows, Maine, \$40,000.

<sup>1</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>2</sup> First session Fifty-sixth Congress, Record, pp. 5167, 5168.

<sup>3</sup> John Dalzell, of Pennsylvania, Chairman.

<sup>4</sup> First session Forty-ninth Congress, Record, p. 5976.

Mr. Benton McMillin, of Tennessee, made the point of order that this was an appropriation not authorized by law. Mr. Samuel J. Randall, of Pennsylvania, said that the bill establishing that light had passed both Houses, but had not yet become a law.

The Chairman<sup>1</sup> sustained the point of order.

**3729. An appropriation for a new naval dry dock, which has not been began under authority of prior law, has been held not to be in continuation of a public work.**—On April 10, 1890,<sup>2</sup> the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Theodore S. Wilkinson, of Louisiana, offered this amendment:

For the purchase, under such regulations as the Secretary of the Navy may prescribe, of additional lands for a site for a navy-yard and dry dock at or near the lands bought by the United States for a naval depot at Algiers, La., the establishment of which navy-yard and dock at Algiers, La., was recommended by the commission of naval officers appointed under the act of Congress approved September 7, 1888, a sum not exceeding \$75,000.

Mr. Charles A. Boutelle, of Maine, made the point of order against the amendment.

The Chairman<sup>3</sup> ruled:

The Chair is of opinion that this amendment is obnoxious to clause 2 of Rule XXI. The proposition of the honorable gentleman from Louisiana is to make an appropriation for the purchase of a site and the establishment of a navy-yard and dry dock, which is not an expenditure “previously authorized by law,” nor is it an appropriation “in continuation of appropriations for such public works and objects as are already in progress.” It does change existing law by authorizing that to be done which is not now authorized by law. It is in sympathy with the proposition contained in the bill against which the point of order was made, and the Chair thinks the point of order is well taken as against this proposition, both in the letter and the spirit of the rule.

**3730.** On April 13, 1892,<sup>4</sup> the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. William S. Holman, of Indiana, raised a point of order against a paragraph in the bill providing for the appropriation of \$250,000 and the authorization of a contract for \$840,000 for the construction of “a timber dry dock at Algiers, La., in accordance with the recommendation of the two commissions to report as to the most suitable site for a dry dock and navy-yard at some point on the shore of the Gulf of Mexico or the waters connected therewith, and for the purchase of such land as is shown by the report of said commission to be necessary for the purpose, in addition to the present Government reservation.”

The Chairman<sup>5</sup> ruled:

No existing law has been called to the attention of the Chair authorizing the adoption of a site or the purchase of the land for such site or the erection of a structure thereon. The section under consideration is therefore in conflict with the rule. Then the question arises, Does this section come within the exception to the rule? It appears that no previous appropriations have been made for the purchase of land as a site or the erection of a structure upon such site, nor can the objects of the proposed appropriations be held to be public works or objects already in progress.

<sup>1</sup> John H. Reagan, of Texas, Chairman.

<sup>2</sup> First session Fifty-first Congress, Record, p. 3274.

<sup>3</sup> Benjamin Butterworth, of Ohio, Chairman.

<sup>4</sup> First session Fifty-second Congress, Record, pp. 3225, 3261.

<sup>5</sup> Benjamin F. Shively, of Indiana, Chairman.

The intent of the rule is to exclude from general appropriation bills such subject-matter as involves new and original themes of discussion and new objects of appropriation. This is a general appropriation bill, and to such bills the rule by its terms is confined. An examination of the precedents that have been called to the attention of the Chair discloses a conflict of authority. As there is such a conflict of authority and as the provisions of the pending section appear to be in conflict with both the rule and exception thereto, the point of order is sustained.

**3731.** On March 25, 1896,<sup>1</sup> the House being in Committee of the Whole House on the state of the Union considering the naval appropriation bill, Mr. Henry H. Bingham, of Pennsylvania, offered an amendment for appropriating the sum of \$200,000 toward the construction of a dry dock at the League Island Navy-Yard.

Mr. Nelson Dingley, of Maine, made the point of order that the proposed appropriation was for an object not authorized by law.

After debate the Chairman<sup>2</sup> ruled:

Rule XXI of the rules governing this body is identical with the rule that was adopted in the Fifty-first Congress. In that Congress, when the naval appropriation bill was under consideration, the identical question that is raised by the gentleman from Maine was then raised, and Mr. Butterworth, of Ohio, was at that time in the chair. The question was fully discussed, and after mature deliberation the Chair then held that the point of order was well taken.

The same question was raised when the naval bill was under consideration in the Fifty-second Congress. Mr. Shively, of Indiana, was then in the chair. The Chair has the Record before him, where the matter was fully discussed, and, while the Chair then recognized that previous to the Fifty-first Congress the ruling was as contended by the gentlemen from Massachusetts and Pennsylvania, the Chair then felt constrained to hold, both on authority and precedent, that the point was well taken. In pursuance of those two precedents, the Chair will hold that the point made by the gentleman from Maine is well taken.

**3732.** On February 23, 1897,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union. Mr. William E. Barrett, of Massachusetts, offered an amendment for appropriating \$1,000,000 to the construction of a concrete dry dock at the navy-yard at Boston, Mass.

Mr. Cyrus A. Sulloway, of New Hampshire, reserved a point of order against the amendment.

After debate the Chairman<sup>4</sup> sustained the point of order.

Mr. Barrett having appealed, the decision of the Chair was sustained, 67 ayes to 19 noes.

**3733.** On March 30, 1898,<sup>5</sup> the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill.

Mr. Joseph G. Cannon, of Illinois, made a point of order against this paragraph of the bill:

Toward the construction of one double-sided steel floating dock of the type known as the combined floating and graving self-docking dock, \$200,000, said dock to be located at the naval reservation at Algiers, La., to be capable of lifting a vessel of 15,000 tons displacement and 27 feet draft of water, to cost, including moorings and wharf, \$850,000.

---

<sup>1</sup> First session Fifty-fourth Congress, Record, p. 3200.

<sup>2</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>3</sup> Second session Fifty-fourth Congress, Record, p. 2150.

<sup>4</sup> James S. Sherman, of New York, Chairman.

<sup>5</sup> Second session Fifty-fifth Congress, Record, p. 3389.

In the debate it was urged that in the act making appropriations for the naval service, approved March 3, 1893, was the following:

Toward the establishment of a dry dock on the Government reservation near Algiers, La., for plans and specifications and for the acquisition of such additional land as may be necessary, etc.

And in the act making appropriation for the naval service, approved July 26, 1894, the following:

For the purpose of completing the purchase of additional land necessary for the establishment of a dry dock at Algiers, La.

And that these appropriations constituted the beginning of the work.

The Chairman <sup>1</sup> ruled:

Clause 2 of Rule XXI provides, among other things, that no appropriation shall be in order upon any appropriation bill, whether original or as an amendment thereto, that has not been previously authorized by law.

Surely any appropriation, under the language of the rule, that has been authorized by previous law is in order; and it seems perfectly clear to the Chair that it was the intention of Congress, by the act of March, 1893, and of July, 1894, to provide for a dry dock at Algiers, La. That seems to be perfectly clear, and the Chair therefore is constrained to overrule the point of order.

**3734.** On February 13, 1907,<sup>2</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William B. Lamar, of Florida, proposed an amendment on the paragraph relating to the navy-yard at Pensacola, to appropriate \$75,000 toward—

One stone dry dock, to cost not exceeding one million one hundred thousand.

Mr. Edward B. Vreeland, of New York, made the point of order that the appropriation was unauthorized.

The Chairman <sup>1</sup> sustained the point of order.

**3735. An appropriation for a floating dry dock, not otherwise authorized by law, is not in order on the naval appropriation bill as in continuation of a public work.**—On February 13, 1907,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Steel floating dry dock: One steel floating dry dock (to cost not exceeding \$1,400,000), \$100,000.

Mr. James R. Mann, of Illinois, made a point of order.

After debate the Chairman <sup>1</sup> sustained the point of order.

**3736.** On May 11, 1906,<sup>4</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Steel floating dry dock: Steel floating dry dock (to cost \$1,250,000), \$100,000.

Mr. James A. Tawney, of Minnesota, made the point of order that the expenditure was not authorized by law.

After debate and an exhaustive citation of precedents the Chairman <sup>5</sup> held:

The paragraph under consideration carries an appropriation for a floating dry dock. A rule of the House prohibits appropriations in general appropriation bills for expenditures "not previously authorized

<sup>1</sup> James S. Sherman, of New York, Chairman.

<sup>2</sup> Second session Fifty-ninth Congress, Record, pp. 2915, 2916.

<sup>3</sup> Second session Fifty-ninth Congress, Record, pp. 2918, 2919.

<sup>4</sup> First session, Fifty-ninth Congress, Record pp. 6737–6743.

<sup>5</sup> Edgar Crumpacker, of Indiana, Chairman.

by law, unless in continuation of appropriations for such public works and objects as are already in progress." It is not claimed that the object for which the appropriation in question is sought to be made is authorized by law, but it is insisted that it is a public work or object already in progress within the meaning of the rule.

The question raised by the point of order in some of its aspects is a novel one. There is no precedent exactly covering it, and it must be decided by the application of principles recognized in the decision of analogous questions. It is settled that general naval appropriation bills may carry appropriations for additional officers and seamen, for new war vessels, for colliers, and for necessary equipment and supplies for the Navy without their being previously authorized by law.

On the other hand, it is settled by the precedents that appropriations for a new naval station, for a new navy-yard, for the selection of a site for a naval station, for the establishment of an armor-plate factory, for the erection of buildings for a naval hospital with authority to acquire a new site, for the construction of stationary dry docks are not in order in general naval appropriation bills unless previously authorized by law.

The logical inference from the precedents is that the Navy proper, consisting of the war fleet, officers, and seamen, with necessary equipment and supplies, is a public work or object already in progress within the meaning of the rule, and appropriations therefor are in order in appropriation bills without previous authority of law, while the administrative branches and the construction and repair establishments of the Navy Department, including, among other things, naval stations, navy-yards, hospitals, magazines, and stationary dry docks, do not ipso facto constitute a public work or object in progress, and appropriations therefor must be previously authorized by law.

The question for decision is whether a floating dry dock is an essential part of the equipment of the Navy proper or whether it belongs to the administrative service of the Navy Department. Dry docks are for the purpose of repairing vessels, and the only essential difference between floating dry docks and stationary dry docks is the portability of the former. Both kinds are intended for the same purpose and belong to the same class of service. Colliers have been held to be an essential part of the equipment of the Navy, obviously because they sail with naval squadrons and attend them in action as supply boats.

A floating dry dock can not convoy a naval squadron on the high seas after the fashion of a collier. It can only be taken from place to place where the sea is calm or it can be securely moored for the purpose of repairing vessels. It is not an essential part of the equipment of the Navy, but clearly belongs to the administrative service of the Navy Department. The point of order is, consequently, sustained.

On May 16<sup>1</sup> Mr. Sidney E. Mudd, of Maryland, proposed this amendment:

One steel floating dry dock, to be so constructed as to serve the purpose of a repair ship and capable of being propelled or towed to any place that may be necessary for the use of the fleet, or any part thereof, for such purpose, to cost not exceeding \$1,250,000, of which amount the sum of \$100,000 is hereby appropriated.

Mr. Joseph T. Johnson, of South Carolina, made a point of order against the amendment.

After debate the Chairman held:

The authorities are in harmony upon the proposition that dry docks are not an essential part of the equipment of the Navy proper. The present occupant of the chair so held a few days ago, and this amendment, the Chair thinks, is within the principle laid down by the Chair in that decision. The Chair sustains the point of order.

The Chairman also ruled out the following amendment, also proposed by Mr. Mudd:

Amend by adding after line 17, page 72, as follows: "One large steel vessel, capable of lifting, receiving, and docking the largest battle ship afloat, to be so constructed as to answer the purposes of a self-docking dry dock and repair ship, to cost not exceeding \$1,250,000, of which amount the sum of \$100,000 is hereby appropriated."

---

<sup>1</sup>Record, pp. 6984, 6985.

**3737. A proposition to appropriate for the establishment of an armor-plate factory was held not to be in order on the naval appropriation bill, such appropriation not being in continuation of a public work or object.—**

On February 22, 1899,<sup>1</sup> the naval appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Air. Oscar W. Underwood, of Alabama, offered, as an amendment to a pending amendment relating to the price of armor plate, a proposition to appropriate \$4,000,000 for the establishment of a plant for the manufacture of armor plate for the Navy.

Mr. Charles A. Boutelle, of Maine, made the point of order against the proposition.

Mr. Underwood contended that the appropriation for such a factory would be in continuation of the public work of building up the Navy.

After debate, and on February 23, the Chairman<sup>2</sup> held:

It is so clear to the Chair that this proposed amendment is obnoxious to Rule XXI the Chair thinks it unnecessary to make any statement. Therefore the Chair sustains the point of order.

**3738.** On April 20, 1900,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union and Mr. W. D. Vandiver, of Missouri, had offered an amendment providing for the construction of an armor-plate factory.

Mr. Alston G. Dayton, of West Virginia, made the point of order that the amendment proposed new legislation.

After debate, the Chairman<sup>4</sup> held:

The question is whether this amendment authorizing the building of a plant for any purpose in the way of making armor plate is new legislation on an appropriation bill. It is not a question of building new buildings in place of old ones, the replacing of buildings already made; it is not a question like those which were decided in reference to the Naval Academy. There it was held that the Government already had a work in progress, the naval school, in the language of the decision of Mr. Cox in the West Point Academy case, and they could build a new building there for that purpose. This is not that question. The Government has never gone into the armor-plate business; it has always bought what is needed by contract. It has never made any, never had any plant for the construction of armor plate, and therefore it seems to the Chair to be most clearly new legislation. It is in line with all the decisions, even the decisions made in the West Point case and the Annapolis case in former Congresses, and the Chair therefore sustains the point of order.

Mr. Oscar W. Underwood, of Alabama, having appealed, the Chair was sustained on a vote by tellers, ayes 97, noes 83.

**3739. The erection of an armor-plate factory, even though on land already owned by the Government, is not the continuation of a public work.—**On February 26, 1904,<sup>5</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John F. Rixey, of Virginia, offered this amendment:

That the Secretary of the Navy is hereby authorized to procure by contract armor of the best quality for any or all vessels herein authorized, provided such contracts can be made at a price not to

<sup>1</sup>Third session Fifty-fifth Congress, Record, pp. 2191, 2246.

<sup>2</sup>James S. Sherman, of New York, Chairman.

<sup>3</sup>First session Fifty-sixth Congress, Record, p. 4495.

<sup>4</sup>Sereno E. Payne, of New York, Chairman.

<sup>5</sup>Second session Fifty-eighth Congress, Record, pp. 2440–2442.

exceed \$398 per ton; but in case he is unable to make contracts for armor under the above conditions, then there is hereby appropriated the sum of \$4,000,000 for the erection, upon property now owned by the Government, of an armor-plate factory of the character and to the extent that the Secretary of the Navy may in his judgment deem necessary and practicable under the appropriation.

Mr. John Dalzell, of Pennsylvania, made a point of order that the provision for an armor-plate factory involved legislation.

After debate, the Chairman<sup>1</sup> held:

As the Chair has already ruled several times during the pendency of this bill, it is quite within the power of Congress to withhold in appropriation or to make it upon a condition that it shall not be used except in a certain way. Undoubtedly the House may withhold entirely an appropriation for armor plate. Undoubtedly it may appropriate with the limitation that no more than a certain amount shall be paid per ton. That has been held in the case cited during the discussion, but here is an amendment which goes further and appropriates \$4,000,000 for the erection, upon property now owned by the Government, of an armor-plate factory. A similar proposition has already been ruled out, but it is contended that this stands upon a different footing because of the expressed provision that the factory shall be erected on property owned by the Government. The argument is made that it would therefore be in continuation of a public work.

Undoubtedly it is within the power of Congress to authorize the erection of an armor-plate factory, and when that has been done to make an appropriation, but Rule XXI expressly provides that—

“No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress.”

It is not pretended that there is any armor-plate factory in progress, but the attention of the Chair has been called to a ruling authorizing the erection of additional buildings on Government ground at West Point and Annapolis. Those rulings have gone to what has been considered the extreme limit. Subsequent occupants of the chair, both Mr. Sherman, of New York, and Mr. Payne, of New York, have held that as original propositions they would not have sustained such a paragraph as in order. Thus, in the fast session of the Fifty-sixth Congress, Mr. Payne, in the chair, upon an appropriation for a new building at the Naval Academy, said:

“If this were a new proposition the Chair would hesitate to declare it in order, but the Chair feels bound to follow the precedent that has been set and acquiesced in by Congress, and therefore overrules the point of order.”

But that building was an addition to the plant of the Naval Academy, so to speak. It was considered as going to a great length to sustain that new building as a continuation of a public work, but even that ruling has not been considered as extending to a case where the additional building was for a purpose other than that to which the existing buildings were dedicated. Thus, on May 17, 1902, the naval appropriation bill then, as now, being under consideration, there was involved a paragraph reading as follows:

“Toward the construction of a building on land owned by the Government at Annapolis for an experiment station and testing laboratory, in the department of marine engineering and naval construction, at a cost not to exceed \$250,000, and the complete equipment of the same with all the necessary appliances and apparatus, at a cost not to exceed \$150,000.”

To that paragraph Joseph G. Cannon, the present Speaker of this House, made the point of order that there was no law authorizing the expenditure, and the Chairman, Mr. Sherman, of New York, held—this is his language:

“Upon the statement of the gentleman from Illinois, chairman of the committee, and also of the gentleman from Maryland, namely, that the building was not considered as a part of the Academy, the Chair is very clear in the opinion that the provision is not in order, and the Chair sustains the point of order.”

Now, here is a provision for an armor-plate factory upon Government land, but there is no pretense that there is any existing factory in continuation of which this might be considered. It was held in the second session of the Forty-fifth Congress that, although an appropriation had previously been made

---

<sup>1</sup>Marlin E. Olmsted, of Pennsylvania, Chairman.

for the purchase of a site for a public building, a proposed amendment appropriating for construction of the building was not in order upon a general appropriation bill.

Now, here is clearly legislation upon an appropriation bill, an appropriation for what is not a continuation of a public work now in progress, nor authorized by existing law, and the Chair sustains the point of order.

**3740. An appropriation for buildings and grounds for a new army hospital was held not to be in continuation of a public work.**—On January 25, 1904,<sup>1</sup> the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Army general hospital, District of Columbia: For the construction in or near the city of Washington, D. C., of an army general hospital, for the treatment of special classes of cases, for purposes of instruction in connection with an army medical school, for training enlisted men of the Hospital Corps in nursing, and to serve as a base hospital in time of war, and for the purchase of land in the District of Columbia for a site for said hospital, \$400,000: *Provided*, That no part of this appropriation shall be used until it shall have been determined by the Secretary of War that the entire cost of plans, buildings, and grounds will not exceed the sum hereby appropriated.

Mr. Henry W. Palmer, of Pennsylvania, made a point of order that no existing law authorized the appropriation.

After debate the Chairman<sup>2</sup> held:

The question "What constitutes a continuation of a public work or the continuation of an appropriation for a public work?" is one which has given rise to many decisions, some of them conflicting. It was decided in the Forty-ninth Congress, as the gentleman from Iowa stated the other day, that the construction of a new vessel for the Navy was a continuation of a public work already in progress. That was probably the extreme limit of the decisions in that direction. It was subsequently held that the construction of a new vessel for the Coast Survey was not the continuation of a public work. That was decided in the Fifty-sixth Congress. It has been repeatedly held—several times in the Fifty-sixth Congress—that the establishment of a light-house, even the building of a new vessel for a light-house tender, was not a continuation of a public work. It was held that the construction of a new dry dock for the Navy was not a continuation of a public work; that the location for a site for a naval magazine was not the continuation of a public work.

Upon this point—the purchase of sites—the weight of authority appears to be to the effect that where the appropriation is for land adjoining an existing site and for the purpose of additional buildings it will be treated as a continuation of a public work, but where the appropriation is for a new site it will not be so treated. In the Fifty-sixth Congress, on the sundry civil appropriation bill, an amendment was offered by the gentleman from Illinois, Mr. Cannon, authorizing the Secretary of the Interior to acquire, by condemnation, 140 acres of land adjoining the present building site of the Government Hospital for the Insane. The gentleman from Missouri [Mr. De Armond] offered an amendment to the effect that if that could not be obtained at a specified price a new site should be purchased. Against that amendment the gentleman from Illinois, the present Speaker, made the point of order which is urged here, and so good a parliamentarian as the gentleman from Pennsylvania [Mr. Dalzell], then in the chair, sustained it.

Now, in addition to that, section 1136 of the Revised Statutes limits the appropriation which may be made for a structure not authorized by previous special authority of Congress to \$20,000. The paragraph here involved provides for an entirely new hospital upon an entirely new site and appropriates \$400,000. It seems to the Chair, therefore, that the point of order is well taken and must be sustained.

**3741. While appropriations for new buildings at existing Government institutions have sometimes been admitted as in continuance of a public work, they are not regarded as establishing a principle.**—On Jan-

<sup>1</sup> Second session Fifty-eighth Congress, Record pp. 1148–1151.

<sup>2</sup> Marlin E. Olmsted, of Pennsylvania, Chairman.

uary 12, 1889,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union considering the Military Academy appropriation bill.

A section of the bill was read providing for the erection of a fireproof building on the grounds of the Military Academy at West Point.

Mr. C. B. Kilgore, of Texas, made the point of order that the building had not been authorized by law.

After debate the Chairman<sup>2</sup> ruled:

The Chair decides that, within the meaning of the provision just read, the building proposed to be erected—"fireproof building on site of public grounds at West Point"—is within the purview of the rule. The construction of a building is an incident to the maintenance of the academy itself, the object being already in progress—the main object contemplated, not only by the bill, but by the very institution of the academy itself.

Therefore the Chairman overruled the point of order.

**3742.** On March 30, 1898,<sup>3</sup> the House was in Committee of the Whole House on the state of the Union considering the naval appropriation bill. Mr. Sidney E. Mudd, of Maryland, offered an amendment authorizing the erection of such new buildings at the Naval Academy at Annapolis as the Secretary of the Navy might consider necessary and practicable, and the removal of old buildings.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the amendment.

After debate, the Chairman<sup>4</sup> ruled:

The Chair, following the precedent cited, the decision of Chairman Cox, will overrule the point of order.

**3743.** On March 2, 1892,<sup>5</sup> the House was in Committee of the Whole House on the state of the Union considering the District of Columbia appropriation bill.

A paragraph of the bill provided for the erection and completion of a suitable building or buildings on the United States Reform School farm in the District to be used as a reform school for girls.

Mr. Walt H. Butler, of Iowa, having made the point of order that this was new legislation, the Chairman<sup>6</sup> said, after quoting the rule:

The Chair has examined the rulings of former occupants of the chair in Committee of the Whole, particularly the ruling referred to by the gentleman from Maine [Mr. Dingley], of Mr. Cox, of New York, and also the ruling by the gentleman from Kentucky [Mr. McCreary], when occupying the chair, both of which are reported in the Rules and Digest. In the case in which Mr. Cox made his ruling it was upon an amendment providing for the construction of a building at West Point on property which belonged to the Government, and for an institution which the Government was bound to maintain, and where it was charged with the maintenance and support of the institution.

So also in the case decided by the gentleman from Kentucky [Mr. McCreary]. That was for the construction of a Naval War College building upon property owned by the Government, and in that case the Chair held that it was an appropriation for works already in progress. The Government owned the property and was bound to maintain that property and that institution.

---

<sup>1</sup>Second session Fiftieth Congress, Record, p. 717.

<sup>2</sup>Samuel S. Cox, of New York, Chairman.

<sup>3</sup>Second session Fifty-fifth Congress, Record, p. 3398.

<sup>4</sup>James S. Sherman, of New York, Chairman.

<sup>5</sup>First session Fifty-second Congress, Record, pp. 1656, 1686.

<sup>6</sup>James D. Richardson, of Tennessee, Chairman.

Here the Chair raised a question as to the ownership of the property on which the building was to be placed, and it was stated that the property was vested in the United States.

The Chair, continuing, said:

It may be, however, that the Government does, own the title in the property, but that will not affect the decision of the Chair or the result at which the Chair will arrive. \* \* \* The distinction which the Chair thinks exists between this case and those referred to, in which the gentleman from New York [Mr. Cox] and the gentleman from Kentucky [Mr. McCreary] made those decisions, is this: The Government was bound to maintain the institutions referred to in the former cases; in this case the Government is certainly not in any way bound to maintain either a boys' reform school or this school. There is no obligation on the Government to maintain either of those schools, and that has been the difficulty the Chair has had in arriving at a conclusion in the matter. But, inasmuch as this is a matter of grave importance, and one which the Chair would not like to prevent the committee from voting upon if it is desirable, the Chair will not decide the point, but, as has been done on former occasions, will submit the question to the committee.

By a vote of 27 ayes to 72 noes the committee decided not to sustain the point of order.

**3744.** On January 26, 1897,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union considering the Indian appropriation bill.

The paragraph providing for the support and education of Indian pupils at the Indian school, Shoshone Reservation, Wyo., having been reached, Mr. Frank W. Mondell, of Wyoming, offered an amendment appropriating "for the erection and equipment of a shop for manual training."

Mr. James S. Sherman, of New York, made the point of order that this was new legislation, opening up a new field of education at that particular school, and not the continuation of a public work.

The Chairman<sup>2</sup> sustained the point of order.

**3745.** On April 18, 1900,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, this paragraph having been read:

Building and grounds, Naval Academy: For the construction at the Naval Academy, Annapolis, Md., of a building suitable for use as cadets' quarters, at a cost not to exceed \$2,500,000, including the architect's fees and the pay of the clerk of the works and the inspectors, \$350,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this paragraph contemplated an expenditure not authorized by law.

After debate, and on the succeeding day, the Chairman<sup>4</sup> held:

When the committee rose last evening a point of order was pending against the paragraph at the close of page 33, making an appropriation for a building suitable for use as cadet quarters at the Annapolis Academy. The point of order raised against this proposition was that it was new legislation, and it was stated that in former appropriation bills provision had been made for the building of new buildings at Annapolis, including this one, and that a limit of cost had been fixed amounting to \$1,200,000; that Congress had appropriated at one time \$500,000 and at another time \$700,000, or the full limit of the appropriation.

The Chair has examined the former appropriation bills, on which appropriations were made, and finds that those appropriations and that limit were for specific buildings, none of which included cadet

<sup>1</sup>Second session Fifty-fourth Congress, Record, p. 1192.

<sup>2</sup>Albert J. Hopkins, of Illinois, Chairman.

<sup>3</sup>First session Fifty-sixth Congress, Record, pp. 4396, 4443.

<sup>4</sup>Sereno E. Payne, of New York, Chairman.

quarters or quarters suitable for cadets, which is the only item appropriated for or included in this particular portion of this bill. So that the Chair concludes that there is nothing in that previous legislation to limit the amount of the appropriation for this particular item in the bill.

The point is also made that this is new legislation and is not in continuance of a public work already in progress. The Chair finds that there have been several rulings upon similar propositions. There was one made in the Fiftieth Congress on a proposition to appropriate for a building at the West Point Military Academy. It was held there by the then presiding officer and acquiesced in without any appeal from any member of the committee at that time that the appropriation was in order, the decision of the Chairman, Mr. Cox, of New York, being in the following words:

“The Chair decides that within the meaning of the provision just read the building proposed to be erected—fireproof building on site of public grounds at West Point—is within the purview of the rule. The construction of a building is an incident to the maintenance of the Academy itself, the object being already in progress—the main object contemplated not only by the bill, but by the very institution of the Academy itself.”

Two years ago when a proposition was made in the naval appropriation bill to build some other buildings at Annapolis, the same point of order was raised, and the gentleman who was then in the chair, Mr. Sherman, of New York, ruled as follows:

“The Chair, following the precedent cited—the decision of Chairman Cox, will overrule the point of order.”

So that there are these two decisions that were acquiesced in by the House at the time, no one appealing from the decision of the Chair.

The Chair finds that there are other decisions, one on an item in the Indian appropriation bill only a short time ago, in 1897, the Chair thinks. It was proposed to build a manual training school at one of the Indian reservations, and that was proposed as a part of a work, in progress, namely, the educating of the Indians. But that particular proposition was ruled out on a point of order.

Of course there are the familiar illustrations of propositions to build dry docks, which have been held to be not in order where they required the purchase of the land, and where the work was not in progress in any sense of the word. If this was an original proposition before the House, the Chair then would not be in accord with the former rulings, which he has cited above. The Chair is inclined to think that those points were not fully discussed before the committee; in neither of these cases was there much discussion before the committee and in the presence of the Chair. It is a case of breaking over the rules. Precedents have been established.

The Chair would not, if called upon to rule in the case of a public building—of a post-office, for instance, tearing down a post-office at a given city and building another one on the same lot—the Chair would not rule that such a proposition was in order. If this were a new proposition, the Chair would hesitate to declare it in order, but the Chair feels bound to follow the precedents that have been set and acquiesced in by Congress, and therefore overrules the point of order.

**3746.** On June 18, 1902,<sup>1</sup> while the general deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. George W. Steele, of Indiana, offered the following amendment:

On page 26, after line 21, insert:

“Marion Branch, at Marion, Ind.: For quartermaster and commissary storehouse and repairing old storehouse and constructing fireproof vaults therein for offices, \$30,000.”

Mr. Charles L. Bartlett, of Georgia, made the point of order that there was no legislation authorizing the appropriation; and Mr. Leonidas F. Livingston, of Georgia, raised the further point that the appropriation was not in order on this bill.

After debate the Chairman said:

The Chair held in a former Congress in reference to Annapolis Academy that an amendment providing for an additional building there was in order. The Chair stated at the time that he so held in

---

<sup>1</sup>First session Fifty-seventh Congress, Record, p. 7025.

<sup>2</sup>James S. Sherman, of New York, Chairman.

deference to former decisions, not because he would have so held had it originally come before the present occupant of the chair. If there was no other question involved now than the question of the enlargement of the plant, the necessary enlargement, the Chair would be inclined to hold that it was in order, following the precedent established in the Naval Academy case and the cases upon which it was based. But the Chair is inclined to think that the suggestion and point made by the gentleman from Georgia, that it is not in order on a general deficiency bill, is well taken. \* \* \* If the Chair may suggest to the gentleman from Illinois, it seems to him that in the preservation of harmony between the bills that this item in all fairness ought to be on the sundry civil bill and not on the general deficiency bill. The Chair is unable to find any ruling which holds one way or the other upon the proposition. \* \* \* The Chair will sustain the last point of order raised by the gentleman from Georgia.<sup>1</sup>

**3747. The construction of a new building at the Naval Academy, but not for the work of the academy, was held not to be in continuation of a public work.**—On May 17, 1902,<sup>2</sup> while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the clerk read the following paragraph:

Toward the construction of a building, on land owned by the Government, at Annapolis, for an experiment station and testing laboratory in the Department of Marine Engineering and Naval Construction (at a cost not to exceed \$250,000), and the complete equipment of the same with all the necessary appliances and apparatus (at a cost not to exceed \$150,000), \$200,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that there was no law authorizing this expenditure.

After debate, during which it was admitted by those in charge of the bill that the building was not considered as a part of the academy, the Chairman<sup>3</sup> held:

Upon the statement of the gentleman from Illinois, the chairman of the committee [Mr. Foss], and also that of the gentleman from Maryland [Mr. Mudd], the Chair is very clear in the opinion that the provision is not in order. The Chair sustains the point of order.

**3748. The completion of the buildings at the Army War College was held to be in continuation of a public work.**—On January 25, 1904,<sup>4</sup> the army appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

For the completion of the necessary buildings, including approaches, heating and lighting plant, for the Army War College, at Washington Barracks, District of Columbia, in accordance with plans of the architects, \$300,000: *Provided*, That no part of this appropriation shall be used until it shall have been determined by the Secretary of War that the entire cost of finishing the buildings, providing the approaches, heating and lighting plant shall not exceed the appropriation herein made.

Mr. James A. Hemenway, of Indiana, made the point of order that there was no law authorizing the construction of these buildings, and that section 1136 of the Revised Statutes prohibited the use of over \$20,000 for such a purpose without specific authorization.

It appeared in the debate that in the preceding appropriation bill<sup>5</sup> there was enacted the following:

---

<sup>1</sup> It should be noted, however, that one function of the deficiency bill is to provide for appropriations not estimated for until other appropriation bills have passed the House.

<sup>2</sup> First session Fifty-seventh Congress, Record, p. 5607.

<sup>3</sup> James S. Sherman, of New York, Chairman.

<sup>4</sup> Second session Fifty-eighth Congress, Record, pp. 1156–1159.

<sup>5</sup> 32 Stat. L., p. 512.

*Provided*, That the Secretary of War is hereby authorized to expend the sum of \$400,000, or so much thereof as may be necessary, from the unexpended balance of the emergency fund appropriated in the act approved March 3, 1899, for the erection of the necessary buildings for the Army War College established at Washington Barracks, D. C., for the instruction of officers of the Army and Militia of the United States.

After debate the Chairman <sup>1</sup> said:

Section 1136 of the Revised Statutes provides:

“Permanent barracks or quarters and buildings and structures of a permanent nature shall not be constructed unless detailed estimates shall have been previously submitted to Congress and approved by a special appropriation for the same, except when constructed by the troops; and no such structures, the cost of which shall exceed \$20,000, shall be erected unless by special authority of Congress.”

Whether that means \$20,000 for one structure or \$20,000 for all the structures it is not necessary to decide here, as in the opinion of the Chair that provision of law as to this particular college was repealed by the act of June 30, 1902, which authorized the expenditure of \$400,000 and did not limit the cost of the buildings even to that amount, but authorized the expenditure of that amount for that year.

Now, section 1136 of the Revised Statutes being thus repealed as to this college by the act of 1902, the Chair is of opinion that the paragraph against which this point of order is made specifically providing for the completion of the necessary buildings, which the Chair is advised are already in course of construction under authority of law heretofore given, the point of order must be overruled.

**3749. The erection of necessary fireproof outbuildings for the Bureau of Engraving and Printing was held to be the continuation of a public work.**—On May 3, 1900,<sup>2</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph had been read:

For the erection and completion of necessary fireproof outbuildings for the Bureau of Engraving and Printing, \$115,000.

Mr. J. H. Bankhead, of Alabama, made the point of order under section 2 of Rule XXI.

After debate the Chairman <sup>3</sup> said:

The Chair would suggest to the gentleman from Alabama that it has been held that an entire new building on the naval grounds at Annapolis was a continuation of a work already begun; and the same ruling was made with respect to appropriations for a new building on the grounds at West Point. This appropriation is for a necessary fireproof outbuilding, a building that has already been begun. \* \* \* The Chair thinks that, following the precedents that have been established in cases at Annapolis and West Point, he is compelled to overrule the point of order.

**3750. The erection of new houses for quarters at the Naval Observatory was held to be the continuation of a public work.**—On January 24, 1901,<sup>4</sup> the naval appropriation bill (H. R. 13705) was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read the following paragraph relating to the Naval Observatory:

New buildings: Erection of three houses for quarters, and for gas, steam, water, and electric-light connections, and furniture for the same, \$18,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the expenditure was not authorized by law.

<sup>1</sup> Marlin E. Olmsted, of Pennsylvania, Chairman.

<sup>2</sup> First session Fifty-sixth Congress, Record, p. 5100.

<sup>3</sup> John Dalzell, of Pennsylvania, Chairman.

<sup>4</sup> Second session, Fifty-sixth Congress, Record, pp. 1412–1414.

The Chairman<sup>1</sup> having reserved his decision until the precedents could be examined, held:

The Chair understands that the Naval Observatory is an institution maintained on land belonging to the Government; that it consists of a group of buildings devoted to the scientific purposes which its title would indicate, and that the appropriation for its maintenance and improvement is made in the naval appropriation bill. The particular provision which is challenged is an appropriation for certain new buildings specified in the language of the provision. It is challenged under the second paragraph of Rule 21, which provided as follows:

“No appropriation shall be reported in any general appropriation or be in order as an amendment thereto for any expenditure not previously authorized by law unless in continuation of appropriations for such public works and objects as are already in progress.”

It has not been shown to the Chair that there is any law authorizing the erection of these buildings except the general law which authorizes the establishment and continuance of the institution itself; and the question at once arises, Does the appropriation come within the exception specified in the rule? In other words, is it a continuation of appropriation for a “public work or object already in progress?”

What, then, is a “public work or object in progress?” A resort to all the decisions upon that part of the rule would simply result in disclosing a contradiction which could not be reconciled. There are many decisions upon the one side and the other of the question which it would be utterly impossible and indeed unprofitable to review at this time, because such a review would disclose nothing but contradiction and darkness. Accordingly the Chair has confined his attention to the precedents which most nearly resemble the case under discussion.

The Chair has found two precedents which may be claimed to sustain the point of order made by the gentleman from Illinois. The first is a ruling made by Mr. Hopkins, of Illinois, in the first session of the Fifty-fourth Congress, to be found on page 1192 of the Record for that session. In that case an amendment providing for the establishment of a manual-training school had been offered and a point of order was made against it. It appeared that the general object of educating the Indians was carried on at the place where this training school was intended to be located, but that no education of the class or kind described in the amendment had yet been undertaken. Upon that ground it was pressed upon the Chair that the amendment provided for something other than a “public work or object in progress,” and upon that ground, apparently, the point of order was sustained.

The other precedent upon that side of the question is a ruling made in the first session of the Fifty-sixth Congress (Record, p. 3993) by the Chairman, Mr. O’Grady, in which he sustained a point of order against a provision for laboratories for the Department of Agriculture. The point of order was sustained without any discussion and without the assignment of any reason by the Chair.

On the other hand, there are many precedents tending the other way. The Chair will allude to some of them. The first precedent was on January 12, 1889, when it was held by Mr. Kilgore, of Texas, that a provision for the erection of a building on public grounds at West Point was in order under the rule.

Again, on March 30, 1898, an amendment was offered for the erection of a new building at the Naval Academy at Annapolis. A point of order was made by the gentleman from Illinois [Mr. Cannon] against the amendment, and after debate it was ruled by Mr. Sherman, of New York, then occupying the chair in Committee of the Whole, that the amendment was in order, following the precedent to which the Chair has just alluded.

In 1892, on March 2, Mr. Richardson, of Tennessee, being in the chair, a paragraph for the erection and completion of a suitable building or buildings on the United States Reform School farm in the District of Columbia was under consideration. The point of order was made against the provision and, after some discussion as to the point of order, the Chairman—as a doubtful question—submitted the consideration of the point of order to the committee. By a vote of 27 ayes to 72 noes it was held by the Committee of the Whole that the amendment was in order. On May 3, 1900, Mr. Dalzell held that an appropriation for the erection of outbuildings for the Bureau of Engraving and Printing was in order in the sundry civil bill.

The last precedent to which the Chair will direct the attention of the committee was a ruling by Mr. Payne, of New York, in the first session of the present Congress, as appears by the Record, page

---

<sup>1</sup> William H. Moody, of Massachusetts, Chairman.

4396 and page 4443. A paragraph in the naval appropriation bill was under consideration providing for the construction at the Naval Academy of cadet quarters. A point of order was made against the paragraph, and considerable debate took place thereon. The question was reserved by Mr. Payne until the next day, when he rendered a decision evidently carefully prepared and after consideration. The Chair will read the closing words of that decision:

“If this were a new proposition, the Chair would hesitate to declare it in order. But the Chair feels bound to follow the precedents which have been set and acquiesced in by Congress, and therefore overrules the point of order.”

It is impossible for the present occupant of the chair to distinguish this case from those of the Naval Academy or the Military Academy to which reference has been made, and while a literal reading of the rule and the construction of the rule which the Chair knows is followed by at least one committee of the House would lead him to the conclusion that the paragraph was not in order, yet the precedents which the Chair has laid before the committee constrain the Chair, in obedience to the salutary principle that a well-settled construction of a rule is a part of the rule itself, to overrule the point of order.

**3751. The establishment of a new station under the Fish Commission was held to be unauthorized by law.**—On February 14, 1901,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the portion relating to the work of the Fish Commission having been reached.

Mr. Marlin E. Olmsted, of Pennsylvania, proposed this amendment:

For the establishment of a station at Middletown, Pa., including the purchase of necessary land \$20,000.

Mr. Joseph G. Cannon, of Illinois, made the point of order that the amendment proposed an expenditure not authorized by law.

The Chairman<sup>2</sup> sustained the point of order.

**3752. The erection of laboratory buildings for the Department of Agriculture was held not to be in continuation of a public work already in progress.**—On April 10, 1900,<sup>3</sup> the agricultural appropriation bill being under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

Buildings for laboratories, Department of Agriculture: For all labor, materials, heating and power apparatus, plumbing, lighting, ventilating, and other necessary expenses in erecting and fitting up suitable fireproof laboratory buildings for the use of the United States Department of Agriculture, on reservation No. 2, in the city of Washington, D. C., all plans and specifications to be approved by and the work to be done under the supervision of the Secretary of Agriculture, \$200,000, to be immediately available.

Mr. Thaddeus M. Mahon, of Pennsylvania, made the point of order that this was new legislation.

The Chairman<sup>4</sup> sustained the point of order.

**3753. The purchase of sites and erection of buildings for the Weather Bureau not being authorized by prior legislation, an appropriation therefor is not in order on the agricultural appropriation bill.**—On January 26, 1907,<sup>5</sup> the agricultural appropriation bill was under considera-

---

<sup>1</sup> Second session Fifty-sixth Congress, Record, p. 2437.

<sup>2</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>3</sup> First session Fifty-sixth Congress, Record, p. 3993.

<sup>4</sup> James M. E. O'Grady, of New York, Chairman.

<sup>5</sup> Second session Fifty-ninth Congress, Record, pp. 1758, 1759.

ation in Committee of the Whole House on the state of the Union; when the Clerk read:

Buildings, Weather Bureau: For the purchase of sites and the erection of not more than five buildings for use as Weather Bureau observatories, and for all necessary labor, materials, and expenses, plans and specifications to be prepared and approved by the Secretary of Agriculture, and work done under the supervision of the Chief of the Weather Bureau, including the purchase of instruments, furniture, supplies, flagstuffs, and storm-warning towers to properly equip these stations.

Mr. James B. Perkins, of New York, made the point of order that there was no law authorizing the appropriation.

In the course of the debate, the Chairman<sup>1</sup> asked:

The Chair would like to ask the gentleman from New York if he contends that there is legislation on our statute books authorizing the erection of five buildings?

Mr. James W. Wadsworth, of New York, cited the general law establishing the Weather Bureau, which contained no specific provisions authorizing the construction of buildings.

The Chairman then held:

The Chair would like to call the attention of the chairman of the Committee on Agriculture to a ruling made in the first session of the Fifty-seventh Congress.

The ruling I refer to is on page 349 of the Manual, where an appropriation for Weather Bureau observatories was held not to be a continuation of a public work or object. Has there been any legislation since that first session of the Fifty-seventh Congress?

No legislation being cited, the Chairman continued:

The Chair thinks he should follow the ruling made in the Fifty-seventh Congress—that there is no authority in law to appropriate for these observatories. The Chair therefore sustains the point of order.

**3754.** On April 28, 1902,<sup>2</sup> while the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union. Mr. Joseph G. Cannon, of Illinois, made a point of order against the following paragraph:

For the purchase of sites and the erection of not less than six buildings for use as Weather Bureau observatories, and for all necessary labor, materials, and expenses, plans, and specifications to be prepared and approved by the Secretary of Agriculture, and work done under the supervision of the Chief of the Weather Bureau, including the purchase of instruments, furniture, supplies, flagstuffs, and stormwarning towers to properly equip these stations, \$50,000.

In opposition to the point of order it was urged that the law establishing the Weather Bureau provided:

It shall be the duty of the Secretary of Agriculture to prepare future estimates for the Weather Bureau, which shall be hereafter specially developed and extended in the interests of agriculture.

At the conclusion of the debate the Chairman<sup>3</sup> said:

The Chair has read the statute upon which the gentleman from New York bases the claim that the committee has authority to report in this bill appropriations of this kind. It seems to the Chair that section 9 of that statute simply directs what shall be the duty of the Bureau in a certain contingency. The Chair does not think the statute was intended to ever confer the power upon the Committee

---

<sup>1</sup>George P. Lawrence, of Massachusetts, Chairman.

<sup>2</sup>First session Fifty-seventh Congress, Record, pp. 4784, 4785.

<sup>3</sup>Llewellyn Powers, of Maine, Chairman.

on Agriculture to include in an appropriation bill an appropriation authorizing the Department to purchase sites and erect buildings.

The object of an appropriation bill is to make appropriations for certain specific objects where laws recognizing the necessity and conferring the power to make them already exists. It has been held that the enlargement or continuation of a work previously authorized by law is permissible upon an appropriation bill and is not subject to a point of order.

But the Chair has not had his attention called to any ruling by which it has been held that under the exceptional clause of the rule it is legitimate or proper to authorize the purchase of a new site and the erection of a building thereon. On the other hand it has been held distinctly that the erection of a laboratory building for the Department of Agriculture was not to be regarded as a continuation of a public work already in progress and that an appropriation for that purpose was subject to a point of order. The purchase of an adjoining building for a hospital already established was held to be such a continuation of a public work as came within the exception to the rule. But there is nothing of that sort here. And it has also been held that an appropriation undertaking to authorize the purchase of land was, under this language of the rule, subject to a point of order, where the land proposed to be purchased was separate and distinct from other land owned by the Government.

The Chair is therefore inclined to adopt the view of the gentlemen from Illinois [Mr. Cannon] that this provision is distinctly legislation upon an appropriation bill; that the wisdom or unwisdom of establishing these sites and erecting buildings thereon—the decision of the question of their necessity or the contrary—is a matter to be determined on a proper bill, considered properly under the rules, and coming from a proper committee. Therefore the Chair holds that this provision upon this, a general appropriation bill, is subject to the point of order made by the gentleman from Illinois [Mr. Cannon], and the point of order made by the gentleman from Illinois is sustained.

**3755. The construction of barracks at a navy-yard was held not to be the continuation of a public work or object.**—On May 17, 1902,<sup>1</sup> while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the paragraph was read making appropriation for various improvements and repairs at the navy-yard, New York.

Thereupon Mr. John J. Fitzgerald, of New York, offered the following amendment:

On page 28, line 15, after the word “dollars,” insert “barracks for enlisted men to cost \$500,000, \$200,000.”

Mr. George E. Foss, of Illinois, made a point of order.

After debate the Chairman<sup>2</sup> held:

The rule invoked in this instance by the chairman of the committee is one which has not at all times and by all chairmen been similarly interpreted. In the opinion of the present occupant of the chair a rather large hole was driven through the rule in order to permit the construction of battle ships without special authorization; but it seems to the Chair that the entering upon the construction of barracks in the way suggested by this amendment is the entering upon a new line of work. It is not a necessary adjunct to the New York Navy-Yard. It is not, in the opinion of the Chair, under a strict interpretation of the rule, a proper amendment. It is, in the opinion of the Chair, under a fair construction of the rule, obnoxious to it. The statute expressly provides, in reference to barracks for the Army, that they can not be constructed except after specific estimates therefor shall come to the House, and then only by a special act providing for them. Now, while that does not apply to the Navy, it seems to the Chair that in interpreting the rule it is fair to consider that provision. As the Chair intimated, the decisions have not been identical; but the notion of the Chair is borne out by ample precedents that this amendment is not in order, and the Chair therefore sustains the point of order.

<sup>1</sup>First session Fifty-seventh Congress, Record, pp. 5590–5592.

<sup>2</sup>James S. Sherman, of New York, Chairman.

**3756. An appropriation for a naval prison at a navy-yard was held not to be in continuation of a public work, and not in order on the naval appropriation bill.**—On February 13, 1907,<sup>1</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Navy-yard, Pensacola, Fla.: Machinery for central power plant, \$35,000; naval prison, \$28,000; conduit system, \$2,500; improvements to storehouse, building No. 25, \$5,000; in all, navy-yard, Pensacola, \$70,500.

Mr. John J. Fitzgerald, of New York, made the point of order against the appropriation for “naval prison.”

The Chairman<sup>2</sup> sustained the point of order.

**3757.** On February 17, 1905,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when this paragraph was read:

Navy-yard, Pensacola, Fla.: Central power house (to complete), \$44,500; tools for yards and docks, \$2,000; water system, \$10,000; fire-protection system, \$5,000; closets and lavatories, \$3,500; garbage crematory, \$7,500; machinery for central power house (to cost \$120,000), \$50,000; naval prison, \$20,000; railroad track and equipment, \$10,000; telephone system, extensions, \$2,000; elevator for building No. 1, \$1,000; in all, navy-yard, Pensacola, \$155,500.

Mr. John J. Fitzgerald, of New York, said:

Mr. Chairman, I make the point of order against the provision for a naval prison, \$20,000, in line 8. I submit that that is not a part of the equipment of a navy-yard. It is an authorization for a naval prison. I submit that it comes within the ruling made a few years since holding that it was improper to appropriate for a barracks at a navy-yard.

The Chairman<sup>4</sup> said:

The Chair will state that the decisions on this point are very numerous and point both ways, but the tendency of the decisions recently made has been to sustain the point of order. The Chair feels constrained to do the same. The Chair sustains the point of order.

**3758. An appropriation for officers' quarters at a navy-yard is not in order on the naval appropriation bill as in continuance of a public work.**—On February 13, 1907,<sup>5</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the State of the Union, when the Clerk read:

Naval station, New Orleans, La.: Improvement of water front, \$25,000; levee improvement and grading, \$25,000; central electric light and power plant, extension, \$50,000; railroad system, \$5,000; drainage system, \$10,000; central heating plant, \$18,000; paving, \$10,000; quarters for commandant, \$12,000; fitting up yard buildings 8 and 16, \$4,300; dispensary building, \$9,000; in all, navy-yard, New Orleans, \$168,300.

Mr James R. Mann, of Illinois, made the point of order against the words, “quarters for commandant, \$12,000.”

After debate, the Chairman<sup>2</sup> sustained the point of order.

<sup>1</sup> Second session Fifty-ninth Congress, Record, p. 2915.

<sup>2</sup> James S. Sherman, of New York, Chairman.

<sup>3</sup> Third session Fifty-eighth Congress, Record, p. 2797.

<sup>4</sup> John Dalzell, of Pennsylvania, Chairman.

<sup>5</sup> Second session Fifty-ninth Congress, Record, pp. 2916, 2917.

**3759. An appropriation for a hospital for lepers at a naval station was held not in order on the naval appropriation bill as in continuation of a public work.**—On February 13, 1907,<sup>1</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Buildings for lepers, island of Guam: Naval station, island of Guam: Buildings for lepers and other special patients, island of Guam, \$4,000; maintenance and care of lepers and other special patients, \$16,000; in all, \$20,000.

Mr. John J. Fitzgerald, of New York, made a point of order against the appropriation for the building.

The Chairman<sup>2</sup> sustained the point of order.

**3760. The erection of new buildings for a naval hospital, with an authorization to acquire a new site, was held to involve legislation.**—On February 18, 1903,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Naval hospital, Washington, D. C.: The erection and completion of new buildings for the accommodation of the United States naval hospital, Washington, D. C., on the grounds belonging to the United States Naval Museum of Hygiene, \$125,000: *Provided*, That the Secretary of the Navy be, and is hereby, authorized, in his discretion, to sell and convey the plot of land and buildings thereon, known as the United States naval hospital, Washington, D. C., situated at Ninth street and Pennsylvania avenue SE., in the city of Washington, D. C., to the highest bidder at public sale, and, after deducting the expenses incident to said sale, he shall pay into the Treasury of the United States, to the credit of the naval hospital fund, the net amount received from said sale: *Provided further*, That the Secretary of the Navy shall have the right to reject any and all bids.

Mr. James A. Hemenway, of Indiana, made a point of order against the paragraph.

After debate the Chairman<sup>4</sup> said:

The decisions are undoubtedly contradictory upon appropriations for buildings upon Government land. The decisions which allowed buildings to be ordered at West Point and at Annapolis by an appropriation bill, it seems to the Chair, have gone to the verge of the law in that direction, and the gentleman who gave the elaborate decision allowing the erection of quarters at Annapolis indicated that he would rule in conformity with what he considered the more numerous precedents rather than as logic required. It seems to the Chair that the rule should not be further strained, and that unless this paragraph comes clearly within these decisions the point of order should be sustained.

In those cases the buildings were to carry out the direct purpose for which the land and buildings there were already being used. This proposition goes a step further, and, instead of being for the direct purpose for which the land is now used, diverts it to another purpose, for there is now no hospital there. It seems to the Chair like the case recently decided, where an appropriation for barracks at a navy-yard was ruled out of order, and like the case last year on this navy appropriation bill, where an appropriation for a laboratory building at Annapolis was held subject to a point of order. The Chair thinks those precedents cover this case, and that logic is upon the same side, and therefore sustains the point of order.

**3761. It is not in order on the naval appropriation bill to appropriate for a new foundry not previously authorized by law at a navy-yard.**

**It is not in order on a general appropriation bill to establish a limit of cost on a public building.**

---

<sup>1</sup> Second session Fifty-ninth Congress, Record, p. 2919.

<sup>2</sup> James S. Sherman, of New York, Chairman.

<sup>3</sup> Second session Fifty-seventh Congress, Record, p. 2363.

<sup>4</sup> Frederick H. Gillett, of Massachusetts, Chairman.

**The mere appropriation of a sum “to complete” a work does not fix a limit of cost to exclude future appropriations for a public building on a general appropriation bill.**

On February 13, 1907,<sup>1</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Navy-yard, Washington, D. C.: Paving, to extend, \$10,000; grading, to extend, \$10,000; quay wall, \$25,000; railroad bridge and tracks, \$40,000; in all, navy-yard, Washington, \$85,000.

Mr. James H. Southard, of Ohio, offered this amendment thereto:

For brass and iron foundry, to cost \$300,000, \$100,000.

Mr. Thomas S. Butler, of Pennsylvania, made the point of order against the amendment that it was not authorized by law.

After debate the Chairman<sup>2</sup> held:

The merits of any proposition or the desirability of any proposed work should not be considered by the Chair in determining whether the proposed work can be appropriated for in a general appropriation bill. What the Chair is to determine is procedure, not merit; and the Chair, accepting as correct the statement of the gentleman from Pennsylvania [Mr. Butler], and differentiating between the present situation and the additional buildings at the Naval Academy and an additional war ship, which have been specifically ruled upon, the former rulings having been followed by the present occupant of the chair on a former occasion, and at that time the present occupant of the chair stating that he was controlled by a specific ruling theretofore made, differentiating between that situation and this, and calling to the attention of the House particularly a decision made by a chairman, the occupant not now being remembered by the present occupant of the chair, but where the present occupant on the floor made a point of order against a provision for the creation of a manual training building for an Indian school, the point of order being sustained.

Properly interpreting the rules and the general line of decisions made thereunder, and drawing a distinction between the general line of decisions and those special decisions in reference to battle ships and in reference to the two academies, the Chair is constrained to hold that the amendment, as now presented, is not within the rule and decisions, and therefore the Chair sustains the point of order.

Thereupon Mr. Southard offered an amendment in this form:

For an addition to brass and iron foundry (to cost \$300,000), \$100,000.

Mr. Butler again made a point of order.

On February 14,<sup>3</sup> Mr. Southard in argument said:

I find no affirmative act, what we usually term an “organic act,” establishing a naval gun factory at the Washington Navy-Yard. This term “naval gun factory” is an evolution. Away back in the fifties or sixties we made appropriations for a gun foundry at the Washington Navy-Yard. So I take it that at that early date we had in existence in the navy-yard what is known as a “gun foundry.” Afterwards appropriations were made for what was termed a “gun plant,” and the words “gun factory” were used first in legislation, so far as I have been able to discover, in the act of 1889; and on June 30, 1890, an appropriation was made in terms for the “Naval Gun Factory” at the Washington Navy-Yard. By the naval act approved March 3, 1883, the President is authorized to select an ordnance board, and by the act of March 3, 1889, an appropriation was made to complete the gun plant and other buildings at the Naval Gun Factory. That appropriation is in the following words:

“To complete the construction and equipment of ordnance shops, offices, and gun plant at Washington Navy-Yard, to be made immediately available, \$625,000.”

<sup>1</sup> Second session Fifty-ninth Congress, Record, pp. 2911–2913.

<sup>2</sup> James S. Sherman, of New York, Chairman.

<sup>3</sup> Record. pp. 2991, 2992.

I will say, Mr. Chairman, that this building, which is now known as the "foundry" was built in 1867, and was then a part of the Steam Engineering Bureau. By Executive order No. 354, made August 14, 1886, the building was turned over to the Ordnance Department, establishing what is now called the "Naval Gun Factory." Changes and alterations have been made since that date and numerous appropriations for buildings at the gun factory have been made. These buildings have been erected and appropriations for equipment have been made until now we have a plant there which has involved an expenditure of millions of dollars.

Now, the question is, and, as I understand it, the only question is, Is this a public work or object which is now in progress?

The Chairman, however, referring to the words "to cost \$300,000" in the amendment, ruled:

The Chair assumes that this is a public work in progress there can not be any doubt about. And the appropriation to give to it the addition the gentleman from Ohio refers to in the opinion of the Chair is not a limitation upon the cost. The act says "complete." It has over and over again been held prior to and during this Congress that to limit the cost is a legislative provision and can not be incorporated in an appropriation bill; and this amendment is clearly an attempt, by this appropriation, to limit the cost, and therefore it is obnoxious to the rules; and the Chair sustains the point of order.

Thereupon Mr. Southard offered the amendment in this form:

For addition to brass and iron foundry, \$100,000.

Mr. James R. Mann, of Illinois, made the point of order that it was not in order to appropriate for such addition, since the acts appropriating for the plant at the Washington Navy-Yard had used the words "to complete the construction." He maintained that this fixed a limit of cost.

The Chairman ruled:

The Chair thinks that the words "to complete" do not definitely fix a limit of cost in the mind of the lawmaking power. It does not say that the lawmaking power, in making that statement, intends to definitely limit the total cost of that work to that amount for all time. Where a statement is made, as was made in the amendment as originally offered by the gentleman from Ohio, for an addition to cost \$300,000, there being now \$100,000 appropriated, that indicates definitely the intention of the lawmaking power to limit the cost to the \$300,000. But to appropriate a given sum with the words "to complete," does not, it seems to the Chair, constitute a declaration on the part of the lawmaking power that all future appropriations shall be limited to that amount for that object. With that understanding, that there has heretofore been no definite declaration of Congress limiting the cost of this general work, the Chair overrules the point of order.

**3762. The selection of a site for a naval magazine was held not to be the continuation of a public work or object.**—On May 17, 1902,<sup>1</sup> while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph G. Cannon, of Illinois, made the point of order on the following paragraph:

New England naval magazine: The Secretary of the Navy is hereby directed to appoint a board of naval officers whose duty it shall be to recommend a suitable site or sites for one naval magazine on the New England coast, between Boston and Portsmouth, suitable for the use of the Boston and Portsmouth navy-yards, and, if upon private land, to estimate its value and ascertain as nearly as practicable the cost for which it can be purchased or acquired, and also to estimate the cost of necessary buildings, grading and filling in, building roads and walks, improvement of water front, necessary wharves and cranes, railroad tracks and rolling stock, fire and water service, and for general equipment of said naval magazine.

The Chair<sup>2</sup> sustained the point of order.

---

<sup>1</sup>First session Fifty-seventh Congress, Record, p. 5600.

<sup>2</sup>James S. Sherman, of New York, Chairman.

**3763. The creation of a commission to select a site for a public building is not such a beginning of a public work as to justify an appropriation for a site.**—On January 29, 1904,<sup>1</sup> the urgent deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union; when Mr. William Sulzer, of New York, proposed the following as an amendment:

That the sum of \$2,000,000, or so much thereof as may be necessary, be, and the same hereby is, appropriated, out of any money in the Treasury not otherwise appropriated, to purchase the site in the city of New York heretofore recommended by the commission for the new post-office.

Mr. James A. Hemenway, of Indiana, made the point of order that the appropriation proposed was not authorized by law, and also that if in order it should be provided for in the sundry civil appropriation bill.

In the debate Mr. Sulzer cited the following law as justifying the appropriation:

That a commission hereby created, consisting of the Secretary of the Treasury, the Postmaster General, and the Attorney-General of the United States, be, and is hereby, authorized and directed to acquire, by purchase, condemnation, or otherwise, a suitable site in the city of New York, borough of Manhattan, and State of New York, upon which to erect a fireproof building for the use and accommodation of the United States post-office in said city: *Provided*, That the site selected shall be bounded on each side by a street. When said commission has acquired a site in said city, as herein provided, the commission shall make a report to Congress, stating the location, dimensions, and cost of the same, and recommend to Congress the character and size of a building that should be erected upon said site, and state the probable cost of such a building, including fireproof vaults, heating and ventilating apparatus, and approaches.

The Chairman<sup>2</sup> held:

Accepting the statement of the gentleman from New York as to the condition of the law, the Chair is of the opinion that it is not such as would authorize this appropriation. The mere appointment of a board for the purpose of selecting a site, but with no authority to purchase the site when selected, does not constitute such a beginning of a public work that the appropriation involved in this proposed amendment can be considered as in continuation of an appropriation for a public work; but, in any event, such an appropriation would be in order, if at all, upon the sundry civil bill, and not upon this, which is an urgent deficiency bill to supply deficiencies in the appropriations for the fiscal year ending June 30, 1904, and for prior years. The Chair therefore sustains the point of order.

**3764. The creation of a board to select a site for a naval training station was held not to be such a beginning of a work as to authorize appropriation for the station itself.**—On February 17, 1903,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following:

Naval training station, Great Lakes: For the purchase of a site for a naval training station and toward the erection of the necessary buildings thereon, \$250,000: *Provided*, That said site shall be upon the shore of Lake Michigan below latitude 43° 40', at a point to be selected, with the approval of the Secretary of the Navy, by the board of naval officers appointed by the Secretary of the Navy for that purpose in pursuance of the authority conferred by the act making appropriations for the naval service for the fiscal year ending June 30, 1903, and for other purposes, approved July 1, 1902.

Mr. Charles H. Grosvenor, of Ohio, raised a point of order against the paragraph.

---

<sup>1</sup> Second session Fifty-eighth Congress, Record, pp. 1387, 1388.

<sup>2</sup> Marlin E. Olmsted, of Pennsylvania, Chairman.

<sup>3</sup> Second session Fifty-seventh Congress, Record, pp. 2325–2327.

After debate, the Chairman<sup>1</sup> held:

It seems very clear to the Chair that if it were not for the legislation of last year this section would be subject to a point of order. The decisions are quite uniform on that subject. Take, for instance, the decisions with reference to dry docks, and even the Algiers case, cited by the gentleman from West Virginia [Mr. Dayton]. The first time in that case the point of order was sustained. It was only afterwards overruled when some appropriation had already been made for purchase of land; so that it seems clear to the Chair that without the legislation of last year this point of order must be sustained.

The question then arises, Does the legislation of last year bring it within the rule, and is this a continuation of a work now in progress? The legislation of last year provided that a board should select a site, estimate its value, and report to Congress. It does not follow from this that Congress would appropriate for that site or would approve the action of the board, and this section in question provides not for the purchase of a selected or specific site, but for a site still to be selected. A work would not be considered begun, in the ordinary use of language, simply by an appropriation for a board which was to select a site and make a report which might or might not be acted upon favorably by Congress, so that, it would seem to the Chair, if there were no authority pertinent, that the legislation of last year would not be sufficient ground for this appropriation.

But there is extensive authority in the same line. The decision cited by the gentleman from Ohio [Mr. Grosvenor] as to the Nicaraguan Canal is very closely in point, and sustains the point of order. There was a decision last year in reference to an appropriation for a survey of a dam and site. The appropriation for the survey was held not to be the commencement of a work. The Chair also has before him a decision by Mr. Speaker Carlisle, which holds that the purchase of land for a building is not such a commencement of the work as to authorize an appropriation for that building. He says:

"The Chair has before him the act approved March 3, 1875, which authorized the purchase of a site for this building, but it confers on the Secretary of the Treasury no authority whatever to contract for the erection of a public building, and the Chair is therefore bound to rule the amendment out of order."

That is certainly a much stronger case than the one in question. The Chair therefore sustains the point of order.

**3765.** On February 23, 1904,<sup>2</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union; when the Clerk read:

Naval training station, Great Lakes: The purchase of land and the establishment of a naval training station on the shore of Lake Michigan, south of latitude 43° 30', \$250,000.

Mr. Henry A. Cooper, of Wisconsin, made the point of order that there was no law authorizing this expenditure.

It appeared that a commission authorized by law had examined and reported on various proposed sites for this station.

On February 24<sup>3</sup> the Chairman<sup>4</sup> sustained the point of order.

**3766. The purchase of adjoining land for a work already established was held to be in continuation of a public work.**—On February 22, 1907,<sup>5</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

To enable the Secretary of the Interior to purchase additional land in the District of Columbia for the use of the Government Hospital for the Insane, and for expenses incident to such purchase, \$25,000, or so much thereof as may be necessary, \$25,000.

---

<sup>1</sup> Frederick H. Gillett, of Massachusetts, Chairman.

<sup>2</sup> Second session Fifty-eighth Congress, Record, p. 2281.

<sup>3</sup> Record, p. 2329.

<sup>4</sup> William P. Hepburn, of Iowa, Chairman.

<sup>5</sup> Second session Fifty-ninth Congress, Record, p. 3703.

Mr. James Hay, of Virginia, made the point of order that there was no legislation authorizing the appropriation, saying:

On page 430 of the hearings the superintendent of the Hospital for the Insane, in respect to the location of the land, says:

“The land is just across the road from our property, at the southeast extremity.”

Well, land across the road is not land adjoining land upon which the hospital is built, and therefore, as it is not adjoining this land, it is subject, in my judgment, to the point of order.

Mr. James A. Tawney, of Minnesota, explained that the land was needed for extending the farm of the institution, and also that the road was a public highway.

The Chairman<sup>1</sup> held:

Assuming that the gentleman from Minnesota [Mr. Tawney] correctly states the facts in relation to the location of the land—and his statement is corroborated by what has been read from the hearings—and that he also correctly states the facts in relation to the highway being an easement upon the land and the abutters upon either side own to the center thereof, subject to the easement of the way, the Chair holds that the provision is not obnoxious to the rule, and therefore overrules the point of order.

**3767.** On February 19, 1901,<sup>2</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this paragraph, relating to the Hospital for the Insane:

For the purchase, at the discretion of the Secretary of the Interior, of not less than 145 acres of land immediately adjoining the present building site of the hospital on the south and extending from Nichols avenue to the Anacostia River, to be acquired by condemnation or otherwise, a sum not to exceed \$145,000, to be immediately available.

Mr. Marlin E. Olmsted, of Pennsylvania, made the point of order that the expenditure was not authorized by law.

During the debate Mr. David A. De Armond, of Missouri, called attention to the law of the preceding session,<sup>3</sup> which appropriated for the extension of the hospital on “lands already owned by the Government, or upon such suitable lands as may be donated to the Government within the District of Columbia for that purpose.” As the hospital could not be extended on the land proposed to be purchased, he argued that the appropriation now proposed could not be in continuation of a public work.

The Chairman<sup>4</sup> held:

The law which the gentleman from Missouri calls to the attention of the Chair relates to the location of buildings used for hospital purposes, and declares that these buildings shall be erected upon land already owned by the Government, or that may be donated to the Government in the District of Columbia. In the opinion of the Chair, that does not militate against the power of the Committee on Appropriations to appropriate a specific sum to acquire additional territory for the asylum. Now, there is a large asylum there that is furnishing accommodations for several thousand soldiers; and it is apparent to all that the land, as well as the buildings, is necessary for this great public purpose, and the Chair thinks that the point of order is not well taken. It is for the committee to say whether the entire 145 acres shall be purchased, or, by amendment, that number of acres shall be enlarged or decreased; but that it is in continuation of this great public object the Chair has no doubt, and therefore overrules the point of order.

---

<sup>1</sup> Charles E. Littlefield, of Maine, Chairman.

<sup>2</sup> Second session Fifty-sixth Congress, Record, pp. 2666–2669.

<sup>3</sup> 31 Statutes at Large, p. 619.

<sup>4</sup> Albert J. Hopkins, of Illinois, Chairman.

**3768.** On May 4, 1900,<sup>1</sup> the sundry civil appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Sidney E. Mudd, of Maryland, made a point of order against this paragraph:

For the purchase, in the discretion of the Secretary of the Interior, at a total cost not exceeding \$210,000, of not less than 140 acres of land adjoining the present building site, \$210,000: *Provided*, That if said amount of land can not be purchased for said amount or for a less sum, the amount herein appropriated shall be applied to the construction of buildings for special classes of patients on the present grounds of the hospital, suitable for the extension as herein proposed.

After debate, the Chairman<sup>2</sup> held:

The Chair thinks that, following the precedents in the West Point case and the Annapolis case, he is compelled to overrule the point of order.

**3769.** On May 5, 1900,<sup>3</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Joseph G. Cannon, of Illinois, offered this amendment:

To enable the Secretary of the Interior to acquire by condemnation, at a total cost not exceeding \$210,000, which sum is hereby appropriated, not less than 140 acres of land adjoining the present building site of the Government Hospital for the Insane: *Provided*, That if said amount of land cannot be acquired by condemnation as herein provided the amount herein appropriated shall be applied to the construction of buildings for special classes of patients on the present grounds of the hospital, suitable for the extension as herein proposed.

To this Mr. David A. De Armond, of Missouri, offered this amendment:

For the extension of the accommodations for the insane, and to provide for the increasing number of such persons to be cared for by the Government, the Secretary of the Interior shall accept for the Government the absolute free gift of a suitable tract of land, containing not less than 500 acres, if the same be offered; and if no suitable tract be offered as a donation, the said Secretary shall buy for the Government a suitable tract of not less than 500 acres, at a price not to exceed \$100 per acre; and the sum of \$50,000 is hereby appropriated for the use aforesaid: *Provided*, That said sum shall be added to the appropriation hereinafter made for buildings for the insane asylum, if not used in buying land as herein authorized.

Mr. Cannon having made a point of order against the amendment to the amendment, the Chairman<sup>2</sup> held:

The Chair understands the gentleman from Missouri to concede that his substitute is new legislation, but to argue that it is admissible because the amendment for which it is offered as a substitute is subject to a point of order. If the original paragraph struck out this morning was not subject to a point of order, this amendment offered by the gentleman from Illinois is not subject to a point of order. The Chair held yesterday, following precedents as he understands them, that the original paragraph was not subject to the point of order, and is therefore now compelled to hold that the amendment offered by the gentleman from Illinois is not subject to the point of order. That being so, the substitute offered by the gentleman from Missouri is subject to the point of order; and the Chair therefore sustains the point of order.

**3770.** On February 16, 1901,<sup>4</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when, in the portions relating to the Fish Commission, the Clerk read the following paragraph:

---

<sup>1</sup>First session Fifty-sixth Congress, Record, pp. 5178, 5179.

<sup>2</sup>John Dalzell, of Pennsylvania, Chairman.

<sup>3</sup>First session Fifty-sixth Congress, Record, pp. 5186–5188.

<sup>4</sup>Second session Fifty-sixth Congress, Record, pp. 2541, 2542.

For the purchase of additional land and water rights and construction of additional ponds at the San Marcos, Tex., station, \$6,000.

Mr. Marlin E. Olmsted, of Pennsylvania, having made a point of order against the paragraph, the Chairman<sup>1</sup> held:

I will state to the gentleman from Iowa that the Chair is entirely clear that, if there is a law authorizing this station, this is only a continuation of what has already been authorized. It is not obnoxious to the point of order.

**3771.** On January 15, 1907,<sup>2</sup> the fortifications appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George E. Waldo, of New York, proposed this amendment:

Amend by including, on page 2, between lines 23 and 24, the following words:

"For the purchase of land adjoining Fort Hamilton, Brooklyn, N. Y., and necessary for the enlargement of said fort and the maintenance and preservation of the fortifications at said fort, the sum of \$250,000."

Mr. Walter I. Smith, of Iowa, made a point of order against the amendment. After debate, the Chairman<sup>3</sup> ruled:

While the Chair thinks there may be some question in reference to the form of amendment making a declaration that this purchase of land is necessary, and that possibly that might be construed to be a change of existing law, yet the Chair assumes that that is more a matter of argument than it is a declaration of law. The rulings have been that where the Government owns land, or a site, the purchase of adjoining land is not subject to a point of order and is a continuance of a work in progress. The Chair, therefore, overrules the point of order.

**3772.** On April 28, 1902,<sup>4</sup> while the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, Mr. Joseph G. Cannon, of Illinois, made a point of order against the following paragraph:

*Provided further,* Not to exceed \$10,000 of the amount hereby appropriated may be used for the purchase of additional land for Bureau of Experimental Stations.

After debate, the Chairman<sup>5</sup> said:

The Chair will say that this is not a new question. It has been ruled upon before. There are precedents where it has been held that the purchase and establishment of a distinct station where the Government has not one now is clearly subject to a point of order, but where it is necessary to purchase additional land that you may utilize and properly use a station that the Government has for any purpose it has been held that an appropriation of money to do that is not subject to a point of order.

The Chair has two cases before him. The purchase of adjoining land for a hospital already established was held to be a continuation of a public work and not subject to a point of order, while an amendment for acquiring a new site was ruled out.

The enlargement of the land and water rights of a fish-culture station was held to be a continuation of a public work and an appropriation for the same not subject to a point of order. The Chair thinks that that distinction has been maintained in the long line of precedents, and even the persuasive reasoning of the gentleman from California will not induce the Chair to go contrary to them and try to establish a new order of precedents.

<sup>1</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>2</sup> Second session Fifty-ninth Congress, Record, pp. 1176-1178.

<sup>3</sup> James R. Mann, of Illinois, Chairman.

<sup>4</sup> First session Fifty-seventh Congress, Record, p. 4787.

<sup>5</sup> Llewellyn Powers, of Maine, Chairman.

**3773.** On May 17, 1902,<sup>1</sup> while the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, the Clerk read the following:

Navy-yard, Washington, D. C.: Gunners' storehouse, \$88,000; coppersmith shop, \$32,000; bronzing and plating house, \$20,000; purchase of land, \$100,000; in all, navy-yard, Washington, \$240,000.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the words "purchase of land, \$100,000."

After debate, the Chairman<sup>2</sup> ruled:

The chairman of the Committee on Naval Affairs asserts that the land in question does not adjoin the navy-yard, in addition to which the estimate submitted for this appropriation clearly states that its object is the enlargement and extension of the present yard, or, in other words, a continuance of the work in progress.

It seems to the Chair perfectly clear from that estimate, and also in line with the ruling for which the gentleman from Illinois [Mr. Cannon] himself contended, which ruling was made in the instance cited by the gentleman from Pennsylvania [Mr. Olmsted], that this provision is proper, and the Chair therefore overrules the point of order made by the gentleman from Illinois.

**3774. The purchase of additional ground and the erection of an addition to an existing building was held to be in continuation of a public work.**—On February 14, 1907,<sup>3</sup> the naval appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Marlin E. Olmsted, of Pennsylvania, called attention to this paragraph, which had been ruled out on a point of order on the preceding day:

For the purchase of ground adjoining the quartermasters' depot, Philadelphia, Pa., and erection thereon of an addition to said depot, not to exceed \$200,000, \$200,000.

Mr. Olmsted said:

I desire to state, Mr. Chairman, that the depot is now one building and covers a lot 80 by 100 feet, that the ground proposed to be purchased is just adjoining it, and that the object is to extend the present building out on to that lot. It is situated on South Broad street, Philadelphia. The building is overcrowded, and the Government is now paying \$4,000 rent for another one. This addition to that building is needed to provide the necessary space for that important depot.

The Chairman<sup>2</sup> said:

The Chair desires to state to the gentleman from Pennsylvania [Mr. Olmsted] that of course the rulings have always been that additional property could be purchased and not additional buildings erected, and the Chair supposed that this was an additional building. On the gentleman's statement that it is simply an addition to an existing building the Chair thinks the proposition would be in order.

Thereupon Mr. Olmsted offered this amendment to take the place of the paragraph which had gone out:

For the purchase of ground adjoining the quartermasters' building, now owned and used by the Government at Philadelphia, Pa., and extending thereon the said depot building, at a cost of ground and building not to exceed \$200,000, \$200,000.

No question was insisted on as to this amendment, which was agreed to.

---

<sup>1</sup>First session Fifty-seventh Congress, Record, pp. 5593–5595.

<sup>2</sup>James S. Sherman, of New York, Chairman.

<sup>3</sup>Second session Fifty-ninth Congress, Record, p. 2965.

**3775.** On February 21, 1907,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James A. Tawney, of Minnesota, offered this amendment:

On page 31, after line 25, insert:

“To enable the Secretary of the Treasury to acquire, by condemnation or otherwise, additional land adjoining the present site occupied by the Bureau of Engraving and Printing, and for the erection, completion, including heating and ventilating, of an addition to, or extension of, the buildings of the Bureau of Engraving and Printing, which shall conform architecturally in character and quality to the material used in the existing buildings of the said Bureau, \$150,000.”

Mr. William Sulzer, of New York, made a point of order that there was no authorization of law.

The Chairman<sup>2</sup> held:

The Chair finds that the proposed amendment is for the purchase of land adjoining the site occupied by the present building, and for the extension of the present building. The Chair overrules the point of order.<sup>3</sup>

**3776. A proposition to purchase a separate and detached lot of land for an army target range was held not to be in continuation of a public work.**—On June 11, 1906,<sup>4</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Francis W. Cushman, of Washington, proposed an amendment:

Land for target range: For the purchase of a tract of land, of 3,000 acres or less, at American Lake, near Tacoma, State of Washington, for a target range, \$30,000.

Mr. Edgar D. Crumpacker, of Indiana, made the point of order that the amendment involved legislation.

After debate, the Chairman<sup>5</sup> ruled:

The gentleman from Indiana [Mr. Crumpacker] has raised a point of order. The Chair thinks it is clearly obnoxious to the rule and subject to the point of order. The Chair thinks you might purchase land next to an army post and that it would probably be a continuation of a public work, but it is evidently not in order to purchase a separate piece of land, as this amendment proposes. It is no more in order, in the opinion of the Chair, than it would be to provide on an appropriation bill for the erection of a hospital building or the construction of an army post without a previous authorization of law therefor. The Chair therefore sustains the point of order.

**3777. An appropriation for rent and repairs of buildings used in the public service was held to be in continuation of a public work.**—On January 27, 1905,<sup>6</sup> the agricultural appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and a paragraph was read as follows:

Purchase and distribution of valuable seeds: For the purchase, propagation, testing, and distribution of valuable seeds, bulbs, trees, shrubs, vines, cuttings, and plants; for rent and repairs; the employment of local and special agents, clerks, assistants, and other labor required in the city of Washington and elsewhere, etc.

<sup>1</sup> Second session Fifty-ninth Congress, Record, p. 3566.

<sup>2</sup> George P. Lawrence, of Massachusetts, Chairman.

<sup>3</sup> Of course if it had been shown that a limit of cost had been fixed by law for the existing building the ruling would necessarily have been different.

<sup>4</sup> First session Fifty-ninth Congress, Record, p. 8299.

<sup>5</sup> James E. Watson, of Indiana, Chairman.

<sup>6</sup> Third session Fifty-eighth Congress, Record, pp. 1483–1485.

Mr. Charles Q. Tirrell, of Massachusetts, made a point of order against the words "rent and repairs."

After debate, the Chairman<sup>1</sup> held:

The Chair is of the opinion that the words "for rent and repairs" should be limited in their application to the work necessary to distribute seeds, and that it is simply an appropriation for the continuance of a public work. The Chair therefore overrules the point of order.

**3778. Appropriations for repairs to public buildings are admitted in general appropriation bills as in continuation of a public work.**—On February 21, 1907,<sup>2</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union when the Clerk read:

For Treasury building at Washington, D. C.: For repairs to Treasury, Butler, and Winder buildings, including personal services of skilled mechanics, \$18,000.

Mr. Frank Clark, of Florida, made the point of order that the expenditure was not authorized by law.

The Chairman<sup>3</sup> held:

The Chair will state the rulings are practically uniform that repairs to public buildings are authorized by existing law, and services of skilled mechanics are of course simply incidental thereto. The Chair overrules the point of order.

**3779. A proposition to repair paving originally laid by the Government in a city street adjacent to a public building was held not to be in continuation of a public work.**

**A proposition to pave city streets adjacent to a public building was held to be without authority of law.**

On June 6, 1906,<sup>4</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

Chicago, Ill., post-office and court-house: The appropriation made in the urgent deficiency appropriation act approved February 27, 1906, for improvements and changes of a general nature is hereby made available also for the interior decoration of the building.

Mr. James R. Mann, of Illinois, proposed an amendment to insert the words "for repair of paving, \$15,000."

Mr. James A. Tawney, of Minnesota, made the point of order that there was no law authorizing the expenditure.

In the course of the debate the act of cession by which Illinois ceded the land for the building to the Federal Government was read, but it did not show a cession of any part of the streets surrounding the lot, but did show a cession of streets running through the lot.

On June 16,<sup>5</sup> by unanimous consent, Mr. Mann was permitted to modify his amendment, so it would read as follows:

For repair of paving laid by and for the United States adjacent to the said building, \$15,000.

---

<sup>1</sup> Frank D. Currier, of New Hampshire, Chairman.

<sup>2</sup> Second session Fifty-ninth Congress, Record, pp. 3565, 3,566.

<sup>3</sup> George P. Lawrence, of Massachusetts, Chairman.

<sup>4</sup> First session Fifty-ninth Congress, Record, p. 7592.

<sup>5</sup> Record, pp. 8645–8648.

After debate on the point of order, the Chairman<sup>1</sup> ruled:

This amendment is different in character and rests upon a different basis from the amendment proposed by the gentleman from Georgia [Mr. Bartlett] and other amendments of like character, because the amendment proposed by the gentleman from Georgia and others of like character that are pending are original propositions for paving around a public building, whereas the one submitted by the gentleman from Illinois [Mr. Mann] is for the repair of a pavement previously laid by the Government. The Chair is clearly of the opinion that a proposition to pave originally is legislation and manifestly subject to the point of order. The only question therefore is as to whether a proposition to repair a pavement already laid by the Government of the United States is legislation or whether or not it is authorized by any existing law. If this proposition be in order, it rests upon one or two facts, if they be facts: First, that the Government of the United States owns the fee where this paving is sought to be done, or, secondly, that it is a "work in progress" within the meaning of our rule. When the proposition was first advanced by the gentleman from Illinois [Mr. Mann], the Chair was inclined to hold that it was in order because the Government of the United States owned the fee, that impression having been given the Chair by the reading of the cession made to this land by the State legislature of Illinois, which the gentleman at that time produced. A careful reading, however, convinces the Chair that it has no reference whatever to the street on which the paving was originally made, that is sought to be repaired, and I presumed that that contention is not made at this time by the gentleman from Illinois. \* \* \* The Chair will read:

"That in case there shall be any street or alley running through any lot or tract of land so purchased or acquired by the said United States for any of the purposes described in the said act therein set forth, all that portion of said street"—

What street? Running through the block on which the building is erected—"or alley, then such block or tract of land shall, upon the purchase of the same by the United States or the transfer of the same to the United States, by condemnation or otherwise, for any of the purposes aforesaid, be, and the same is hereby, vacated and closed, and the lots or tracts of land abutting upon such street or alley"—

"Such," referring back to the street or alley running through this block on which the building has been erected—

"shall extend to the central line."

And so forth.

Manifestly, in the opinion of the Chair, having reference only to alleys and streets running through this block, then possessed by the Government, on a part of which the public building was erected, and having no reference to the streets or alleys then originally paved and now sought to be repaired. \* \* \*

The legal fiction is that the adjoining landowner owns to the middle of the street, owns subject to an easement. That is a legal fiction resorted to to prevent the fee from being in nubibus, or in the clouds, it being necessary in legal contemplation for it to vest somewhere or in somebody, and is only a legal fiction. The Chair is clearly of the opinion that the Government does not own the fee for the purpose of this legislation to the center of the street.

Now, the only other proposition is that this is a "work in progress." The Chair is of the opinion that when the Government of the United States laid the paving in question, now sought to be repaired, that it did not do it because of any legal obligation resting upon it to do the paving, but that it was a mere gift to the city of Chicago, which had absolute control of the streets and alleys of that city; that it was a mere gratuity on the part of the Government to the city, and that the Government of the United States does not now have such an interest in that paving that it might prevent the city of Chicago from doing with it as it pleases. In other words, if the city of Chicago desired to take up that pavement, which was laid there by the United States, the United States Government has no such interest in that paving that it could enjoin the city of Chicago from taking it up, casting it aside, or doing with it as it pleased. Essentially, the streets and alleys of the city are exclusively within the control of the municipality of the city of Chicago, and not in the United States Government.

Now, the gentleman has made another point, which was that this proposed amendment which he has offered, even if it be subject to a point of order, is sought to be appended as an amendment to a clause which is itself subject to a point of order, and therefore takes his amendment from under the operation of the general rule.

---

<sup>1</sup>James E. Watson, of Indiana, Chairman.

The Chair desires to call the attention of the gentleman from Illinois to the fact that it has been frequently held that, while a paragraph changing existing law may be allowed by general consent to remain and, thus remaining, may be amended by any germane amendment; yet that this does not permit an amendment which adds general legislation. So that if his amendment be legislation, it is still subject to the point of order. For these reasons the Chair is inclined to the opinion that this is not authorized by law, and is therefore subject to the point of order, and the Chair sustains the point of order.

Mr. Charles L. Bartlett, of Georgia, then called attention to an amendment which he had proposed on a previous day, for paving around the Government building at Macon, Ga.

The Chairman held:

The Chair is of the opinion that the amendment proposed by the gentleman from Georgia is not authorized by existing law, and therefore sustains the point of order.

**3780.** On June 16, 1884,<sup>1</sup> the deficiency appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. James O. Broadhead, of Missouri, proposed an amendment providing for paving streets adjoining certain public buildings in St. Louis, Mo., Des Moines, Iowa, and other cities.

Mr. Samuel J. Randall, of Pennsylvania, made the point of order that there was no law authorizing this expenditure.

Mr. Broadhead argued that the paving of the adjoining streets was the continuation of a public work; that the executive officers of the Government recommended it, and Mr. James N. Burnes, of Missouri, further argued that, as the United States Government in purchasing the property had not limited its obligations, it must discharge the obligations that would rest on a private owner, of which in Missouri the paving of the adjacent streets was one.

Mr. Randall stated that the buildings referred to in the amendment were completed structures, and that this appropriation was not in continuance of the work.

At the conclusion of debate the Chairman<sup>2</sup> held:

The gentleman from Pennsylvania [Mr. Randall] makes the point of order that the expenditure contemplated by this amendment is not authorized by law. In answer to that the gentleman from Missouri who proposes the amendment cites the recommendation of the executive officer having this work in charge. The recommendation of an executive officer is not legal authority to do anything. It is usually coupled with a request to Congress asking for a law to authorize the work recommended. The ingenious argument made by the gentleman from Missouri on the right that the tax laws of the State of Missouri imposed this burden on this property and therefore authorized the expenditure is not good, because that would make the Treasury of the United States liable to every burden that a legislature might see fit to impose upon public property. All these arguments might be good reasons offered to Congress for the enactment of a law to authorize the expenditure. But until that is done such an appropriation can not be made. It seems that the executive officer who had this work in charge did not feel himself authorized to expend any part of the money appropriated for that public work in this particular piece of work which this amendment asks to be provided for, and if he could find in the law no authority for this expenditure it is safe to conclude that there was no authority to do it.

The Chair thinks that the point of order is well taken. This is a deficiency bill, intended to carry appropriations for liabilities already incurred and not to authorize them. The Chair sustains the point of order.

---

<sup>1</sup>First session Forty-eighth Congress, Record, pp. 5196-5199.

<sup>2</sup>Poindexter Dunn, of Arkansas, Chairman.

**3781.** On August 4, 1890,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union, considering the general deficiency appropriation bill, when Mr. Joseph H. Outhwaite, of Ohio, offered this amendment:

For completion of work upon court-house and post-office grounds at Columbus, Ohio: For repairing of pavements of streets and alleys adjacent to said grounds for one-half the width thereof (in excess of limit for said building), \$4,247.30.

Mr. David B. Henderson, of Iowa, made the point of order that this would be an expenditure not authorized by law.

The Chairman<sup>2</sup> sustained the point of order.

**3782. The making of a survey to ascertain the feasibility, etc., of a proposed public work was held not to be such a beginning of the work as would authorize an appropriation in an appropriation bill.**

A proposition relating to the construction of the Nicaragua Canal was held not germane to the sundry civil appropriation bill.

On February 14, 1899,<sup>3</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. William P. Hepburn, of Iowa, offered an amendment authorizing the President to purchase land necessary to construct the Nicaragua Canal; authorizing the President to direct the Secretary of War to construct the canal of a certain specified capacity; appropriating one hundred and fifteen millions of dollars for the work, and specifying various details relating to the administration of the work.

Mr. Joseph G. Cannon made a point of order against this amendment as follows:

First, the amendment is not germane; second, the amendment is obnoxious to Rule XXI in this, that it proposes legislation; third, that it appropriates money not authorized by existing law; fourth, it appropriates money not in pursuance of a public work or object in progress.

Mr. Hepburn thereupon cited the act of March 2, 1895, whereby Congress had appropriated for a board of engineer officers to inspect and report on the feasibility, permanence, and cost of construction and completion of the canal; and the act of 1898, whereby provision was made for continuing the surveys and examinations.

After debate, and on February 15,<sup>4</sup> 1899, the Chairman<sup>5</sup> ruled:

The committee will observe that the point raised by the gentleman in charge of the bill does not affect the merits of the bill relating to the construction of the Nicaragua Canal. The point raised is one purely of a parliamentary character, and simply relates to the construction of the rule that was invoked by the gentleman who has the appropriation bill in charge. The bill, as the committee will remember, is a general appropriation bill, and when we reached the point on page 74 indicated by the Clerk the gentleman from Iowa [Mr. Hepburn] arose and presented an amendment, which has been read from the Clerk's desk, and the gentleman from Illinois [Mr. Cannon] raised the following points against it. He said:

"Mr. Chairman, I desire to make the point of order against this amendment. First, the amendment is not germane; second, the amendment is obnoxious to Rule XXI in this, that it proposes legislation; third, that it appropriates money not authorized by existing law; fourth, it appropriates money not in pursuance of a public work or object in progress."

<sup>1</sup> First session Fifty-first Congress, Record, p. 8121.

<sup>2</sup> Lewis E. Payson, of Illinois, Chairman.

<sup>3</sup> Third session Fifty-fifth Congress, Record, p. 1872.

<sup>4</sup> Record, pp. 1908, 1909.

<sup>5</sup> Albert J. Hopkins, of Illinois, Chairman.

The rule referred to by the gentleman reads as follows:

“2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

The gentleman from Iowa who offered the amendment, in answer, insisted that the amendment is permissible because it is in continuation of public works already in progress; and in support of that he cited to the Chair a law that was adopted by Congress in 1895 providing for surveys and a supplementary law of 1898 making additional appropriation. In regard to determining whether this law can be construed as having established the public works, namely, the construction of this canal, it is important to examine the language itself. The committee will note that it says “for the purpose of ascertaining the feasibility and cost of the construction and completion of the Nicaraguan Canal, etc., \$20,000 are appropriated.” The language clearly indicates that it is for the purpose of ascertaining facts that will guide the action of Congress in the future, without committing it to any policy whatever.

Now, the amendment of 1898 does not enlarge the scope or purpose for which the original appropriation was made. It simply increases the amount, but limits it to these purposes, namely, to ascertaining a state of facts that can be used for the public hereafter. The wisdom of that will be noted on reflection, because of the wide divergence of opinion as to the manner in which this Nicaraguan Canal should be constructed, whether by private enterprise or by the Government guaranteeing the bonds that should be issued, or whether the Government should take a copartnership with private individuals; or, as proposed by the gentleman from Iowa, take the construction upon itself and obtain the control and sovereignty over the territory through which the canal is to be constructed.

So that, to the Chair, it is entirely clear that the law cited by the gentleman from Iowa is not susceptible of the construction suggested by him, but is to ascertain the facts, leaving the Government of the United States entirely clear hereafter to determine whether it will embark in such an enterprise or not. Indeed, the Chair is fortified in this by the amendment sent to the Clerk's desk by the gentleman from Iowa [Mr. Hepburn], which provides that the President shall be authorized in the first instance to purchase territory, and, in the second, to direct his Secretary of War to go on and take all the preliminary steps necessary for the construction of the canal itself. So that, as the Chair construes it, the very amendment offered by the gentleman is a refutation of the statement that the preliminary legislation appropriating in 1895 \$20,000 and in 1898 \$150,000 commits the Government to the construction of this canal.

Now, on this part of the rule, the Chair is fortified by the previous decision on other questions. As has been stated by several gentlemen, this rule, invoked by the gentleman from Illinois, has been the rule in this House for more than a generation, and there have been repeated rulings on the identical point raised that the Chair is now considering. As late as the Forty-fifth Congress, Mr. Carlisle, of Kentucky, one of the ablest parliamentarians who has ever presided over this body, was called upon to pass upon this question.<sup>1</sup> While the committee were considering an appropriation bill, Mr. Ryan, of Kansas, offered the following amendment to be incorporated into the bill:

“Fifty thousand for a building at Topeka, Kans., of the kind and for the uses provided in the act of Congress entitled ‘An act to authorize the purchase of a site for a public building at Topeka, Kans.,’ approved March 3, 1875, and such building shall not exceed in cost the sum of \$200,000.”

Mr. Atkins, of Tennessee, raised the point of order that under this rule, invoked by the gentleman from Illinois, it was not a proper amendment, and Mr. Carlisle, after discussion, ruled that it was not. Mr. Ryan in his argument showed that Congress had already authorized the purchase of a site, and that \$10,000 had been appropriated for that purpose, and that the jurisdiction of the site had been given by the State of Kansas to the United States Government.

But Mr. Carlisle held that the purchase of a site did not authorize the construction of a building upon it, although the purpose for which the site was bought was the construction of a public building; and he held that the amendment was not in order. There was no appeal from that decision.

In the Fifty-first Congress Mr. Wilkinson, of Louisiana, offered an amendment to a general appropriation bill appropriating \$75,000 for the construction of a dry dock at Algiers, La. Prior to the offering of that proposition a naval board, acting with full authority under the law, had indicated the location

---

<sup>1</sup>Second session Forty-fifth Congress, Record, p. 4445. See section 3785 of this chapter.

for the site for a dry dock at Algiers. That amendment was offered when the naval appropriation bill was under consideration.

The gentleman from Maine [Mr. Boutelle], the chairman of the Naval Committee at that time, made a point of order against the amendment that it was obnoxious to the rule now under consideration. Mr. Butterworth, of Ohio, a very able parliamentarian, as the older Members of the House will remember, was in the chair, and, after listening to a full discussion, held that the locating of the site by that naval board did not authorize the appropriation of \$75,000 for the construction of the dry dock. He sustained the point of order. The committee acquiesced in his ruling.

There are numerous other decisions along this line, all of them in harmony with the two decisions which the Chair has read to the committee in support of his position that the point made by the gentleman from Iowa that the law cited by him is a commencement of the construction of the canal is not well taken.

Now, as to the point made by the gentleman from Michigan that this amendment is proper under existing law because there is a treaty between the United States and the Republic of Nicaragua looking to the construction of a canal. An examination of that treaty will show that it is entirely foreign to the proposition contained in the amendment offered by the gentleman from Iowa. The canal that is contemplated in that treaty is a canal that is to be under the supervision and absolute control of the Government of Nicaragua; so that the United States would be eliminated from the matter at the pleasure of the Republic of Nicaragua. The amendment offered by the gentleman from Iowa proposes to buy a strip of territory where the Government of the United States shall become absolutely supreme. So that the two are inconsistent; and the Chair holds that that does not authorize the amendment offered by the gentleman.

There are a few other considerations on this point that the Chair desires to present to the committee. The bill under consideration, under the rule which has been invoked, makes appropriations only to meet existing law. No appropriation is provided for unless it is to meet some obligation which has accrued by virtue of existing law. \* \* \*

The amendment offered by the gentleman from Iowa [Mr. Hepburn] goes entirely beyond that; it recognizes the fact that there are no obligations whatever on this question between the United States, and the Republics of Nicaragua and Costa Rica, and provides in the first section that the President of the United States shall be authorized to purchase from the States of Costa Rica and Nicaragua, for and in behalf of the United States, such portion of territory now belonging to those States as may be desirable and necessary for the construction of this canal, and authorizes the necessary expenditure for that to be made by the President of the United States.

The gentleman from Illinois (Mr. Cannon) claims as one of his objections that this amendment is not germane to the bill, and the Chair is inclined to hold that that objection is well taken, for this reason, that this amendment proposes to enter into negotiations with two separate, independent States by the President of the United States looking to the acquiring of foreign territory. Gentlemen are familiar with the Constitution of the United States and the decisions of the Supreme Court of the United States, which hold that we can acquire foreign territory only under the war and treaty making power. One of the leading cases, I think, is that of *Fleming v. Page*. Another is the recent Mormon case, decided in 136 United States Reports, by Mr. Justice Bradley, wherein he elaborates the point that foreign territory can be acquired only under this clause of the Constitution.

Now, suppose, instead of seeking to acquire foreign territory from these two small States, the amendment had been to acquire the island of Ireland from the British Government. Does anybody contend for a moment that that would be held germane to this appropriation bill, and that we could go on and legislate for the purchase of that island from Great Britain if she were willing to sell? It seems to the Chair that this extreme illustration shows that in the first section of the amendment offered by the gentleman from Iowa [Mr. Hepburn] it departs widely, not only from the requirements of an appropriation bill itself, but from the rules that govern and control us.

If we can not purchase Ireland by an amendment to this appropriation bill, the same objection holds true that we have no right to purchase foreign territory from any country whatever.

Another test as to whether this legislation is germane and should be considered is this: All gentlemen of the committee are familiar with the rule which provides for the dividing of the work of the House among the various committees of the House. Among those committees we have the Committee on Appropriations, whose work is not to consider legislation, but to report appropriations. That committee

can create no laws. It is limited simply to make appropriations to carry out laws that already exist. Another committee is the Committee on Interstate and Foreign Commerce. That committee has the right to originate bills that may become laws, and this amendment that has been offered here is offered by the chairman of the Committee on Interstate and Foreign Commerce. Coming from that committee as a separate bill, its hearing before the House would be entirely proper.

But suppose that bill had been introduced and sent to the Speaker's desk and the question had arisen as to which committee it should go to, what committee should have jurisdiction of it. Suppose the chairman of the Committee on Appropriations had insisted that it should go to the Committee on Appropriations and the chairman of the Committee on Interstate and Foreign Commerce had insisted that it should go to his committee and that his committee should take jurisdiction. The Chair apprehends there would have been no doubt in the Speaker's mind in determining that the committee presided over by the gentleman from Iowa [Mr. Hepburn], the Committee on Interstate and Foreign Commerce, should have jurisdiction of this subject rather than the committee presided over by the gentleman from Illinois [Mr. Cannon], the Committee on Appropriations.

For the reasons indicated the Chair is inclined to sustain the point of order made by the gentleman and to hold that the amendment proposed is not in order.

Mr. Hepburn having appealed, the decision of the Chairman was sustained on a vote by tellers, ayes 127, noes 109.

**3783.** On February 20, 1902,<sup>1</sup> the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

To enable the Secretary of the Interior to begin the preliminary work in the construction of a reservoir on the Gila River, in the Territory of Arizona, at a favorable point near the San Carlos Indian Agency, for storing the flood waters of said river, said water to be used for the benefit of the Indians on the Gila River and such others as may be allotted land there, the excess of waters to be used for reclaiming vacant public lands and supplying present appropriated water rights. The Secretary of the Interior is also authorized to acquire and prepare the dam site, and do such detailed work as may be necessary for preparing specification for advertising for bids for the various classes of work connected with the construction of the dam and its appurtenances, and to prepare plans and estimates of cost of construction (with Indian labor, so far as the same can be profitably used), and designate the vacant public lands which can be irrigated from the stored water of said reservoir; the sum of \$50,000 is hereby appropriated, or so much thereof as may be necessary. The Secretary shall report fully at the next session of Congress as to the details herein enumerated as to the cost and benefits of said works and of bids received for the construction and completion of said reservoir.

Mr. Joseph G. Cannon, of Illinois, made the point of order that this work was not authorized by existing law.

The Chairman,<sup>2</sup> after debate, ruled:

The Chair knows of no existing law which authorizes an appropriation for the purpose of reclaiming public lands or for the purpose of furnishing waters for the irrigation of lands in private ownership, as is undoubtedly contemplated by the provision. The chairman of the committee and the gentleman from Arizona have stated that this provision is, in their opinion, simply a continuation of a work heretofore authorized, an appropriation having heretofore been made for a survey of and report upon a dam at the point contemplated in this provision. It was held in a very notable case that the making of a survey to ascertain the feasibility of proposed public works was not such a beginning of work as would authorize an appropriation in an appropriation bill.

The Chairman then had the ruling read, which was made February 14, 1899.<sup>3</sup>

---

<sup>1</sup>First session Fifty-seventh Congress, Record, pp. 1997–2000.

<sup>2</sup>Frank W. Mondell, of Wyoming, Chairman.

<sup>3</sup>Ruling of Chairman Hopkins on an amendment authorizing the construction of the Nicaragua Canal. See section 3782 of this volume.

The Chairman then called the attention of the committee to the former legislation on this subject:

For ascertaining the depth of the bed rock at a place on the Gila River, in Gila County, Ariz., known as The Buttes, and particularly described in Senate Document No. 27, Fifty-fourth Congress, second session, and for ascertaining the feasibility and estimating in detail the cost of the construction of a dam across the river at that point for purpose of irrigating the Sacaton Reservation, and for ascertaining the average daily flow of water in the river at that point, \$20,000, or so much thereof as may be necessary, the same to be expended by the Director of the United States Geological Survey under the direction of the Secretary of the Interior: *Provided*, That nothing herein shall be construed as in any way committing the United States to the construction of said dam.

The Chairman then said:

The committee will note that the proviso in this legislation is very similar to the proviso contained in the legislation on which the former ruling was made—that nothing therein contained should pledge the United States to the construction of a dam at that point. \* \* \* So that the question as to whether or not a former survey pledged the Government to a continuation of the work, it seems to the Chair, is clearly settled by the language of the legislation itself as well as by the decision already quoted.

Now, even though there were legislation providing for the reclamation of public lands, which there is not, even though there were legislation providing for expenditures for the purpose of providing waters for the irrigation of private land, it would be a grave question whether an appropriation for those purposes would be germane to an Indian appropriation bill. In view of all these facts the Chair believes that the provision is very clearly subject to a point of order, and the point of order is therefore sustained.

Thereupon, Mr. Marcus A. Smith, of Arizona, offered, in lieu of the paragraph ruled out, the following as an amendment:

To enable the Secretary of the Interior to begin the preliminary work in the construction of a reservoir on the Gila River in the Territory of Arizona, at a favorable point near the San Carlos Indian Agency, for storing the flood waters of said river, said water to be used for the benefit of the Indians on the Gila River; the Secretary of the Interior is also authorized to acquire and prepare the dam site, and do such detailed work as may be necessary for preparing specification for advertising for bids for the various classes of work connected with the construction of the dam and its appurtenances, and to prepare plans and estimates of cost of construction (with Indian labor, so far as the same can be profitably used), and designate the vacant public lands which can be irrigated from the stored water of said reservoir; the sum of \$50,000 is hereby appropriated, or so much thereof as may be necessary. The Secretary shall report fully at the next session of Congress as to the details herein enumerated, as to the cost and benefits of said works, and of bids received for the construction and completion of said reservoir.

Mr. Joseph G. Cannon, of Illinois, made the same point of order.

The Chairman said:

The Chair endeavored to be as clear and explicit as possible on the point as to whether or not the former survey pledged the Government to a continuation of work at that point, and, following former rulings and the plain provisions of the statute, held that it did not so pledge the Government. The language of the legislation itself clearly indicates that it was not intended that that legislation should pledge the Government to a continuation of the work. It says that “nothing herein shall be construed to in any way commit the United States to the construction of said dam.”

So that it seems to the Chair that there can be no controversy on that point. Now, the question is as to whether the elimination of the words in the former paragraph, omitted in the gentleman's amendment, so changes the character of the proposed legislation as to bring it within the rule.

While legislation providing for general irrigation on Indian reservations, to be expended at the discretion of the Commissioner or the Secretary, might be held to be germane, it is very questionable whether a provision for a specific irrigation work is not subject to a point of order. In a ruling made a few days ago on the urgent deficiency bill it was held that a paragraph providing for the establishment of an Army post was subject to a point of order, but that an amendment providing in general for the

shelter of troops was not. The Chair calls the gentleman's attention to the fact that there is in his amendment a provision authorizing and instructing the Secretary to "designate the vacant public lands which can be irrigated from the stored water of said reservoir," clearly indicating the purpose of the amendment to provide water for lands other than lands of the Indians; and as there is no law authorizing this class of expenditures, the Chair holds that the point of order is well taken, and the point of order is therefore sustained.

**3784. The law having authorized surveys to determine the practicability of a cable to Hawaii, a proposition to authorize the construction of a cable to Hawaii and the Philippines was held not to be within the exception relating to the continuation of a public work.**—On February 14, 1899,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. John B. Corliss, of Michigan, proposed an amendment to authorize the construction of a cable to Hawaii and the Philippine Islands.

Messrs. Alexander M. Dockery, of Missouri, and Joseph G. Cannon, of Illinois, having reserved points of order, Mr. Corliss argued that the construction of the cable had been undertaken by this paragraph in the act of 1891 for the support of the Navy:

Telegraphic cable surveys: To enable the President to cause careful soundings to be made between San Francisco, Cal., and Honolulu, in the Kingdom of the Hawaiian Islands, for the purpose of determining the practicability of the laying of a telegraphic cable between those points, \$25,000, or so much thereof as may be necessary, and the President is hereby authorized to direct the use of any vessel or vessels belonging to the United States in making such survey.

After debate the Chairman<sup>2</sup> held:

The Chair is ready to rule on the amendment. The committee will observe that the bill now under consideration is a general appropriation bill, and that section 2 of Rule XXI, referred to by the gentleman from Michigan [Mr. Corliss], provides that in bills of this character no amendment is proper that is not authorized by existing law and germane to the subject-matter of the bill under consideration.

An examination of the amendment itself, it seems to the Chair, will satisfy any person that this amendment is not in order. The very first line provides that "the President of the United States be, and is hereby, authorized to construct," which is an admission that under existing law the President of the United States has no such power or authority. It says he is hereby "authorized to construct, lay, maintain, and operate a magnetic line of cables from a point on the Pacific coast to the Hawaiian Islands and thence to the Philippines." This is in the first section, and every line of it provides for new legislation. It recognizes the fact that under existing law there is no authority for the President of the United States to construct such a line as is proposed in the first section of the bill, either to the Hawaiian Islands or to the Philippine Islands.

The second section is additional new legislation, because it provides that after the authority is granted to the President, and the President has exercised it in pursuance of the direction of Congress, he shall transfer the management and authority under it to the Secretary of War. Of course there is no law in existence to-day that authorizes the Secretary of War to provide for the management of any cable line between the United States and the Hawaiian Islands or the Philippine Islands, or any other place in the Pacific Ocean, as is provided for in section 1.

The third section directs the Secretary in what manner this line shall be governed and controlled by his Department, and also authorizes the sending of cables by individuals. So, to the Chair, it seems entirely clear that it is new legislation.

Now, if we are to adhere to the requirements contained in section 2 of Rule XXI, which provides that such an amendment as this is not in order, it seems to the Chair that it is his duty to hold that the

---

<sup>1</sup>Third session Fifty-fifth Congress, Record, pp. 1864–1866.

<sup>2</sup>Albert J. Hopkins, of Illinois, Chairman.

point made by the gentleman in charge of the bill is well taken, and that the amendment is not in order, and the Chair so rules.

**3785. Although an appropriation had previously been made for the purchase of a site for a public building a proposed amendment appropriating for the construction of the building was ruled out of order.**—On June 11, 1878,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Thomas Ryan, of Kansas, offered this amendment:

Fifty thousand dollars for a building at Topeka, Kans., of the kind and for the uses provided in the act of Congress entitled "An act to authorize the purchase of a site for a public building at Topeka, Kans.," approved March 3, 1875, and such building shall not cost to exceed \$200,000.

Mr. J. D. C. Atkins, of Tennessee, made a point of order against the amendment.

The Chairman<sup>2</sup> ruled:

The language of Rule 120<sup>3</sup> is very specific. It is that "no appropriation shall be reported in such general appropriation bills, or be in order as an amendment thereto, for any expenditure not previously authorized by law." And then the exception is made in these cases, "unless in continuation of appropriations for such public works and objects as are already in progress \* \* \*." Heretofore no provision has been made for the construction of a building and no such work is in progress. The rule requires that both of those conditions shall exist in order to make the amendment in order on an appropriation bill. The Chair has before him the act approved March 3, 1875, which authorized the purchase of a site for this building, but it confers on the Secretary of the Treasury no authority whatever to contract for the erection of a public building, and the Chair is therefore bound to rule the amendment out of order.

**3786. The distribution of card indexes, etc., by the Library of Congress was held to be in continuation of a public work.**—On March 22, 1906,<sup>4</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read this paragraph relating to the Library of Congress:

Distribution of card indexes: For service in connection with the distribution of card indexes and other publications of the Library, including not exceeding \$500 for freight charges, expressage, and traveling expenses connected with such distribution, \$10,800.

Mr. Thomas W. Hardwick, of Georgia, made the point of order that this paragraph involved an increase of appropriation not authorized by law.

In debate Mr. John J. Fitzgerald, of New York, said:

I desire to say that the Library of Congress is authorized by law. This is a part of the Library work. It is one of the things which is generally authorized in the maintenance of the Library. It is not one of those cases where a point of order is good against the item. It is a service done in continuation of the work of the Library, and merely because the amount is increased it does not come within the rule so as to make it subject to a point of order, as it would if it were an increase of salary. It is for a continuation of a work in progress, the work of maintaining the Library, which is existing under the law, and which work is done in pursuance of law. It seems to me under these circumstances it is proper to appropriate the amount determined upon by the committee.

<sup>1</sup>Second session Forty-fifth Congress, Record, p. 4445.

<sup>2</sup>John G. Carlisle, of Kentucky, Chairman.

<sup>3</sup>Now section 2 of Rule XXI. See section 3578 of this volume.

<sup>4</sup>First session Fifty-ninth Congress, Record, pp. 4139, 4140.

After debate the Chairman<sup>1</sup> held:

It is hardly within the province of the Chair to enter into a minute consideration and discussion of the various duties imposed upon the Librarian by the general act of Congress creating his office and in more or less general terms defining his duties. It seems to have been conceded by both branches of Congress and the President in past years that this was a proper part of the duties, because appropriations have from time to time been made for it. The gentleman from Georgia makes the point of order that the amount of appropriation is increased this year without previous authority of law, and that point would be good were it not for the exception found in the last part of the second clause of Rule XXI in favor of public works and objects already in progress. The Chair finds that it ruled in the Fifty-seventh Congress, as appears on page 349 of the Manual, that "an appropriation to complete a list of claims was held to be the completion of a public work or object." The Chair thinks that this is even more within the exception than the completion of a list of claims, and therefore overrules the point of order.

**3787. An appropriation for current repairs and improvements in the Botanic Garden was held to be the continuation of a public work.**—On March 22, 1906,<sup>2</sup> the legislative appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For procuring manure, soil, tools, fuel, purchasing trees, shrubs, plants, and seeds; and for services, materials, and miscellaneous supplies, and contingent expenses in connection with repairs and improvements to Botanic Gardens, under direction of the Joint Library Committee of Congress, \$6,500.

Mr. Thomas W. Hardwick, of Georgia, made a point of order that there was no law authorizing this expenditure, and that it was not for a continuing work.

After debate the Chairman<sup>1</sup> held:

The paragraph against which this point of order is urged shows upon its face that it is for the purpose of improving and continuing a Government plant. It is in continuation of appropriations heretofore made for a public work and object in progress, and therefore within the exception to the general prohibition found in the second clause of Rule XXI. The Chair therefore overrules the point of order.

**3788. A proposition to complete the marking of certain graves of soldiers was held to be in continuation of a public work.**—On June 11, 1906,<sup>3</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. Warren Keifer, of Ohio, proposed the insertion of the following amendment:

For completing the marking of places where American soldiers fell and were temporarily interred in Cuba and China, \$4,000, or so much thereof as may be necessary, such sum to be immediately available.

Mr. James A. Tawney, of Minnesota, made the point of order that there was no authority of law for the appropriation.

It appeared from the debate that the last sundry civil appropriation law had provided:

For marking the places where American soldiers fell and were temporarily interred in Cuba and China, \$9,500, said sum to be immediately available.

It also appeared from a letter from the Quartermaster-General of the Army that an additional appropriation would be needed to complete the work.

---

<sup>1</sup> Marlin E. Olmsted, of Pennsylvania, Chairman.

<sup>2</sup> First session Fifty-ninth Congress, Record, p. 4144.

<sup>3</sup> First session Fifty-ninth Congress, Record, p. 8293.

After debate the Chairman<sup>1</sup> held:

The Chair finds in the appropriation bill passed in 1905 an appropriation "For marking places where American soldiers fell and were temporarily interred in Cuba and China." It seems to be a definite object appropriated for in the last bill and capable of being carried into execution and completion. The Chair thinks it is not subject to the point of order, and therefore overrules the point of order.

**3789. An appropriation for free evening lectures in the school buildings of the District of Columbia was held to be without authorization of law and not in continuation of the public work of education.**—On January 21, 1907,<sup>2</sup> the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. J. Van Vechten Olcott, of New York, offered this amendment:

After line 6, page 53, insert the following:

"For free evening lectures, to be given in the public school buildings or such halls as may be designated under rules and regulations of the board of education, \$1,500."

Mr. Albert S. Burluson, of Texas, made the point of order that the amendment was for an expenditure not authorized by law.

After debate the Chairman<sup>3</sup> held:

Of course the power of Congress over the public schools is plenary, and Congress has provided by law for the government of the schools of the District through the board of education. As the Chair understands, the board of education has power under that law to provide in reference to the curriculum and has full authority within the limitations of the law. It seems to the Chair that it would not be within the province of Congress on an appropriation bill to add a provision requiring the board of education to teach a particular thing or use a particular text-book. On an appropriation bill an item limiting or changing the authority of the board of education would be subject to a point of order, and the Chair thinks that this item is for something not provided by law directly; that it is a limitation upon the power of the board of education not proper on an appropriation bill, and that it can not be called a work in progress, because the appropriation one year for that fiscal year does not indicate that it shall be continued by Congress. The Chair, therefore, sustains the point of order.

**3790. The erection of a new schoolhouse in the District of Columbia was held not to be in continuation of a public work.**—On January 24, 1905,<sup>4</sup> the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

For site for and toward construction of one eight-room building in the fifth division to relieve Curtis School, \$29,800; and the total cost of said building, including cost of site, under a contract which is hereby authorized therefor, shall not exceed \$59,800.

Mr. C. R. Davis., of Minnesota, made the point of order that there was no law authorizing the construction of this building.

Mr. James T. McCleary, of Minnesota, referred to the general law, which provided for a school system and the proper extension of that system as exigencies arise, citing it as follows:

And the Commissioners of the District of Columbia shall have power, subject to the limitations and provisions herein contained, to apply the taxes and other revenues of said District to the payment

<sup>1</sup>James E. Watson, of Indiana, Chairman.

<sup>2</sup>Second session Fifty-ninth Congress, Record, pp. 1468, 1469.

<sup>3</sup>James R. Mann, of Illinois, Chairman.

<sup>4</sup>Third session Fifty-eighth Congress, Record, pp. 1320, 1321.

of the current expenses thereof, to the support of the public schools, the fire department, and the police, and for that purpose shall take possession and supervision of all the offices, books, papers, records, moneys, credits, securities, assets, and accounts belonging or appertaining to the business or interests of the government of the District of Columbia, and exercise the duties, powers, and authority aforesaid.

Mr. McCleary continued:

That is, under the act of 1878 comes this division of the work of the District and the maintenance of the schools, and it occurs to me that this is authorized by law. It would seem that the appropriation is justified in another way, as being for a continuation of an existing work—a work in progress.

The Chairman<sup>1</sup> held:

Does the gentleman from Minnesota think that the fact that the District maintains public schools constitutes such a work that the building of a new schoolhouse would be a continuation of a work in progress? \* \* \* The Chair is clearly of the opinion, and he is sustained by the precedents, that to buy a site for a new schoolhouse would require positive legislation, just the same as it would to buy a site for a new wharf or a new dry dock or any other new public structure. The Chair can not see any difference between these cases; it is just as necessary in order to maintain the District government to have a District building as it is to have a District schoolhouse to carry on school work. The District building must be and authorized by positive legislation, without regard merely to an appropriation. The Chair sustains the point of order.

**3791. An appropriation for the purchase of playgrounds for the District of Columbia was held not to be such a continuation of the work of the school system as would enable it to be placed in a general appropriation bill.**—On January 17, 1907,<sup>2</sup> the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For the purchase of playground sites, to be immediately available, \$75,000.

Mr. Champ Clark, of Missouri, made the point of order that the appropriation was not authorized by law.

In the course of the debate Mr. Frederick W. Gillett, of Massachusetts, argued:

Mr. Chairman, what is in order on the District appropriation bill, it seems to me, ought to be decided upon somewhat different grounds, or at least there ought to be a different leaning on the part of the Chair, from other appropriation bills. because there is here a municipal government for the continued operation of which this bill provides, and it may be if the same rules are applied that are applied to other appropriation bills a great deal that is in the regular District appropriation bill, and which everyone would agree ought to be there, might be stricken out.

Therefore, it seems to me that the Chair should consider that a District appropriation bill appropriates for a work in progress—namely, the municipal government—and all those phases of municipal government which are necessarily appropriated for are in order on a District appropriation bill.

The Chairman, held:

The gentleman from Missouri [Mr. Clark] makes the point of order upon the paragraph of the bill providing for the purchase of playground sites, to be immediately available.

The gentlemen who contend that the matter is not subject to the point of order seem to rely principally upon the proposition that this is a part of the public school system in some way. It seems to the Chair that if the gentlemen had thought at the time of the preparation of the bill that the playgrounds were a part of the public school system the item would have been inserted at some point among the twenty pages of the bill under the heading of public schools. It scarcely seems to the Chair that the

<sup>1</sup> James R. Mann, of Illinois, Chairman.

<sup>2</sup> Second session Fifty-ninth Congress, Record, pp. 1297–1299.

purchase of playgrounds apart from the public schools can be called a part of the public school system; and it has been held by the Chair that even a provision in the bill providing for the erection of a new public school was subject to the point of order in this bill if not previously authorized.

As the Chair understands, there is no direct legislation authorizing the purchase of the playgrounds. If a bill were introduced in the House for that purpose it would be referred to the Committee on the District of Columbia, which would have jurisdiction to consider and report it. If a bill reported from that committee were passed upon the subject, then the Committee on Appropriations would acquire jurisdiction. In the opinion of the present occupant of the chair, contrary to his personal inclinations as to playgrounds, the item is new legislation and is subject to the point of order; and the Chair therefore sustains the point of order.

**3792. An appropriation for additional playgrounds in the District of Columbia, not for enlargement of existing playgrounds, was held not to be in continuation of a work in progress.**—On January 21, 1907,<sup>1</sup> the District of Columbia appropriation bill was under consideration in the Committee of the Whole House on the state of the Union, when Mr. George W. Norris, of Nebraska, offered to the paragraph relating to the equipment and maintenance of school playgrounds the following:

For the purchase of additional playgrounds, \$75,000.

Mr. Joseph T. Johnson, of South Carolina, made the point of order that the expenditure was not authorized by law.

After debate the Chairman<sup>2</sup> held:

The Chair does not feel called upon to express any opinion as to whether an item would be in order to enlarge any present playground or the purchase of land adjacent to them. It has been held in a number of cases that where the Government owns land for a particular purpose, that it has bought or otherwise has, it was in order to add to the amount of ground by an appropriation as a work in progress. The Chair thinks that it has been the uniform ruling that the purchase of a new piece of ground for a new project, unless authorized by existing law, is subject to the point of order. While the present occupant of the chair is very much in sympathy with the idea of an appropriation for playgrounds, he feels constrained, as Chairman, to hold that the item is not authorized by law and is not in order. The Chair therefore sustains the point of order.

**3793. An appropriation for continuation of an authorized road in the District of Columbia, and not in excess of the limit of cost, was admitted as in continuation of a work.**—On January 24, 1905,<sup>3</sup> the District of Columbia appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. C. R. Davis, of Minnesota, made the point of order that the following paragraph proposed an appropriation not authorized by law:

For completing the opening, grading, and macadamizing of Fourteenth street from its present terminus at Lydecker avenue to Piney Branch road, \$37,245.

Mr. James T. McCleary, of Minnesota, explained as follows:

This is clearly a work in progress, authorized by the last appropriation act. The last appropriation act contains the following language:

“For grading and macadamizing, according to the plans of the first section permanent system of highways, Fourteenth street from its present terminus at Lydecker avenue, with the same width of roadway now open immediately south of said avenue to the junction near Brightwood of said street

<sup>1</sup> Second session Fifty-ninth Congress, Record, p. 1470.

<sup>2</sup> James R. Mann, of Illinois, Chairman.

<sup>3</sup> Third session Fifty-eighth Congress, Record, pp. 1301, 1302.

extended with Piney Branch road, including connecting line of avenue where Fourteenth street is shifted from its direct extension, and for the removal, with the assent of owners, of houses and barns, or other improvements which may be within the lines of said streets to adjacent sites of present owners, \$20,000, the whole cost of said work, under a contract which is hereby authorized therefor, not to exceed \$59,000.”

This paragraph, Mr. Chairman, appropriates for the balance of that sum.

The Chairman<sup>1</sup> said:

Does the Chair understand from the statement of the gentleman from Minnesota [Mr. McCleary] that the amount carried in this paragraph is included within the limit of cost fixed by the law to which the gentleman refers?

Mr. McCleary having replied in the affirmative, the Chairman overruled the point of order.

**3794. The construction of a bridge on a road in the District of Columbia was held to be the continuation of a public work.**—On May 4, 1900,<sup>2</sup> the sundry civil appropriation bill being under consideration in Committee of the Whole House on the state of the Union, this paragraph was read:

For construction of a bridge across Rock Creek on the line of the roadway from Quarry road entrance under the direction of the Engineer Commissioner of the District of Columbia, \$22,000, one-half of which sum shall be paid out of the revenues of the District of Columbia.

Mr. J. H. Bankhead, of Alabama, having made a point of order, the Chairman<sup>3</sup> held:

The Chair has no doubt that this appropriation is in continuation of a public work already begun and is not subject to a point of order.

**3795. The continuation of the preparation of a geological map of the United States was held to be in continuation of a public work within the meaning of the rule.**

**The gauging of streams was held not to be a continuing work within the meaning of the rule.**<sup>4</sup>

On February 23, 1907,<sup>5</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For general expenses of the Geological Survey: For the Geological Survey and the classification of the public lands and examination of the geological structure, mineral resources, and the products of the national domain, and for surveying forest reserves, including the pay of necessary clerical and scientific force and other employees in the field and in the office at Washington, D.C., and all other absolutely necessary expenses, including telegrams, furniture, stationery, telephones, and all other necessary articles required in the field, to be expended under the direction of the Secretary of the Interior, namely.

Mr. John Dalzell, of Pennsylvania, moved to amend by inserting after the words “national domain” the following:

To continue the preparation of a geological map of the United States, gauging streams, and determining water supply.

<sup>1</sup>James R. Mann, of Illinois, Chairman.

<sup>2</sup>First session Fifty-sixth Congress, Record, p. 5173.

<sup>3</sup>John Dalzell, of Pennsylvania, Chairman.

<sup>4</sup>See also section 3714 of this volume.

<sup>5</sup>Second session Fifty-ninth Congress, Record, pp. 3777–3781, 3784, 3785.

Mr. James A. Tawney, of Minnesota, made the point of order that there was no authority of law for the preparation of the map or the gauging of streams.

After debate the Chairman<sup>1</sup> held:

A year ago, it will be remembered by those who took an interest in it at that time, that all of these questions were presented elaborately in an argument covering two days in this House. The present occupant of the chair was then sitting as the Chairman of the Committee of the Whole House on the state of the Union, and in an elaborate opinion settled these questions at that time.

Therefore, the Chair at this time does not think it necessary to go fully and completely into these cases. The Chair therefore desires to say that he thinks that the point of order should be sustained to the amendment proposed by the gentleman from Pennsylvania for two reasons. To continue the preparation of a geological map of the United States is one thing; gauging streams and determining water supply is another thing, and the Chair thinks that that portion of the amendment which has reference to the gauging of streams and the determining of the water supply is subject to the point of order for two reasons: First, because the gentleman does not limit it to the national domain, and clearly, if the holdings of the Chair a year ago are to be sustained and followed here, it must be at all events and under all circumstances confined to the national domain.

Thereupon Mr. Dalzell offered an amendment, to insert the words:

To continue the preparation of a geological map of the United States.

Mr. Tawney made the point of order that there was no law authorizing this. The Chairman held:

A year ago the point of order was made on a clause contained in the sundry civil bill at that time providing for the preparation of a geological map. Afterwards, when the whole thing had been carefully debated on the floor, the gentleman from Indiana [Mr. Crumpacker] withdrew the point of order, so that precise question was not presented to the Chair at that time; but the point of order against the making of a topographical map was presented to the Chair at that time, and the Chair thinks that the preparation of a geological map is on all fours with the case presented then of the preparation of a topographical map. The Chair at that time, in a decision of some length, held that, while there had been no statutory authorization for the preparation of topographical maps, yet, inasmuch as that work had been carried in successive appropriation bills, it became within the meaning of the rules of this House a continuing work in progress, and held it in order. Therefore the Chair overrules at this time that point of order. The question is on the amendment offered by the gentleman from Pennsylvania.

Thereupon Mr. Frank W. Mondell, of Wyoming, proposed to insert after the words "mineral resources" the words "including water."

Mr. Tawney made the point of order.

The Chairman held:

The Chair thinks this is obnoxious to the rule and that the point of order should be sustained. When the statute creating the office of the Geological Survey was passed, it had this language, and the Chair assumes if the Geological Survey of the United States has any power it was conferred upon it by the express language of the statute which created the Geological Survey, and that aside from it it has no power. This is the language:

*Provided*, That this officer shall have the direction of the Geological Survey, the classification of the public lands, and the examination of the geological structure, mineral resources, and products of the national domain."

Now, it occurs to the Chair that the word "water" is included in the term "mineral resources," and if water is not a mineral, in its relation to agriculture, therefore it is not included in the term "mineral resources," and can not be included in any of the powers conferred by statute upon the Geological Survey. \* \* \* The committee in formulating this bill has followed precisely the language of the statute, which the Chair has just read, creating the Geological Survey.

---

<sup>1</sup>James E. Watson, of Indiana, Chairman.

“Classification of the public lands, the examination of the geological structure, and the mineral resources and products of the national domain,” etc.

Now, the Chair calls the attention of Members to the fact that the committee specifically follow the language of the statute. The Chair supposes that the gentleman from Wyoming is seeking to change that language, because if he were not seeking to change it it is already included in the bill; and if he is seeking to change it, it is a change of existing law, entirely outside of the authority conferred on the Geological Survey by that statute, and therefore the Chair sustains the point of order.

Mr. Mondell thereupon moved to insert the words “especially water.”

Mr. Tawney having made the point of order, the Chairman sustained it.

Mr. Mondell then moved to insert the words:

Water resources and products of the national domain.

Mr. Tawney having made a point of order, the Chairman sustained it, saying:

The Chair again calls attention to the fact that in the language of the bill pending the committee in formulating the bill have followed precisely the language of the statute, and all the powers conveyed on the Geological Survey are conferred by that statute. Now, if the examination of those things suggested by this amendment now rests with the Geological Survey, then the appropriation is provided in the bill; if it is not, then it is in contravention of the statute, and is therefore new legislation, and the Chair sustains the point of order. It is clearly obnoxious to the rule.

**3796. The continuing of a topographical survey was held to be the continuation of a public work.**—On June 13, 1906,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read:

For topographical surveys in various portions of the United States, \$300,000, to be immediately available.

Mr. William H. Stafford, of Wisconsin, made the point of order that there was no law authorizing the expenditure.

After debate, the Chairman<sup>2</sup> held:

The Chair thinks it is not subject to a point of order, and will give his reasons very briefly. The Chair desires to distinguish between this item and the one last ruled out by the Chair. In the opinion of the Chair there is no law in existence now authorizing the gauging of streams, nor is there any law in existence now authorizing the topographical survey of any portion of the United States. The Chair desires, however, to say that in the act creating the Geological Survey there is no positive inhibition or prohibition as against the language contemplated in the section now under consideration. \* \*

\* There is nothing in the organic act which prohibits the gauging of streams, and the Chair is about to distinguish between the two cases. There is nothing in the organic act which prohibits either, and either having once been begun by a provision on an appropriation bill would be a work in progress, provided it came within the meaning of “a public work in progress” as set forth by our rule.

Now, any act or any building or any public work can be begun whether there is authorization in law for it or not, provided no point of order is made on the appropriation. And when once begun it may be a public work in progress and may be continued by subsequent appropriations. For instance, the House can put in an appropriation bill a provision to spend \$100,000 to erect a public building without any previous authorization of law, provided no point of order be raised against it; but once having been begun under that act of appropriating, all other appropriations necessary to complete the object would be in order.

Now, the Chair thinks the only difference between this pending proposition and the one last ruled on by the Chair rests in the fact that this is a definite, specific something that can be concluded and

<sup>1</sup> First session Fifty-ninth Congress, Record, pp. 8432–8438.

<sup>2</sup> James E. Watson, of Indiana, Chairman.

completed, while the other was not. The gauging of streams is something that might continue forever; you might gauge the same stream over and over again, and as the water supply decreased or increased the gauging could be carried on. What is meant by topography? The Chair will read:

“A detailed description of particular places, especially the art of representing on a map the physical features of any locality.”

Now, having once taken the topography of a county or of a State, it remains the same, so that this is a continuing work in progress, in the opinion of the Chair, which distinguishes it clearly from the gauging of streams and the determining of the water supply of the United States; and therefore the Chair overrules the point of order.

**3797.** On February 23, 1907,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

For topographical surveys in various portions of the national domain, \$250,000, to be immediately available.

Mr. Marlin E. Olmsted, of Pennsylvania, offered an amendment to strike out the words “national domain” and insert “United States.”

Mr. Walter I. Smith, of Iowa, made the point of order that there was no authorization for a topographical map of the United States.

The Chairman<sup>2</sup> held:

The Chair overruled the point of order following the rule of the occupant of the chair, whose place he but temporarily took. \* \* \* The Chair anticipated this point being raised, and before temporarily taking the place of the former occupant of the chair asked him as to his ruling, and the Chair is simply following what would have been the ruling of the regular occupant of the chair had he been here. \* \* \* The Chair understands that the permanent occupant of the chair held this proposition to be in order upon the theory that it was a continuance of the work in progress.

**3798. An appropriation for repair of an existing Government road to a national cemetery is in order on a general appropriation bill as in continuance of a public work.**

**An appropriation to build a new road to a national cemetery was ruled out of a general appropriation bill as not being a legitimate continuation of the cemetery as a public work.**

On February 23, 1907,<sup>3</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read as follows:

Road to national cemetery, Pensacola, Fla.: For completing the construction of the Government roadway to the Barrancas, Fla., National Cemetery, near Pensacola, Fla., \$32,000.

Mr. John A. T. Hull, of Iowa, made the point of order that there was no legislation authorizing the appropriation.

Mr. James A. Tawney, of Minnesota, explained that the roadway was owned by the Government.

<sup>1</sup> Second session Fifty-ninth Congress, Record, pp. 3806, 3807.

<sup>2</sup> James S. Sherman, of New York, temporarily called to the chair by Chairman James E. Watson, of Indiana

<sup>3</sup> Second session Fifty-ninth Congress, Record, pp. 3765, 3768, 3770.

The Chairman<sup>1</sup> held:

From the reading of the paragraph itself and from the statement of the gentleman from Minnesota, this seems to be an appropriation for the continuation of a Government work in progress, and therefore the Chair overrules the point of order.

Very soon thereafter the Clerk read:

Road to the national cemetery, Port Hudson, La.: For repairing the bridge, culvert, and roadway from Port Hickey, La., to the Port Hudson, La., National Cemetery, \$10,000.

Mr. Richard Wayne Parker, of New Jersey, made the point of order.

Mr. Tawney explained that the road referred to was a Government road in all those portions which were to be repaired.

The Chairman held:

The Chair learns from the statement of the gentleman from Minnesota that this is a Government road, and as the appropriation is for the repair of that road the Chair overrules the point of order.

The Clerk read as follows:

"Road to national cemetery, Keokuk, Iowa: For repairs to the approach roadway to the Keokuk, Iowa, National Cemetery, \$1,500: *Provided*, That the city of Keokuk deeds to the United States, free of charge, the land over which the road extends: *And provided further*, That the city of Keokuk improve and agree to maintain in proper repair the road leading south from the main driveway of the city cemetery to the point where the Government road begins, \$1,500."

Mr. Parker made a point of order.

After debate, during which Mr. Hull contended that the proposed appropriation was similar to that for the road at Barrancas, and Mr. Walter I. Smith, of Iowa, urged that this road was an appurtenance to or enlargement of the cemetery the Chairman held:

The Chair thinks there is a very clear line of demarcation between the ruling referred to by the gentleman from Iowa and the present case. As the gentleman from Illinois has said, the proposition embodied in the language from lines 15 to 18 is clearly in order, and the very language of the proposition made it in order, besides the statement made by the chairman of the committee that it was for the improvement of a Government road, a road now owned by the Government. It was therefore clearly within the rule of a Government work in progress.

Here is a proposition to build a road over land that does not now belong to the Government, and the mere fact that a proviso is put in does not change the rule.

Neither can the Chair coincide with the view expressed by the gentleman from Iowa, [Mr. Smith,] on the ground that the road is necessary to get to the cemetery and therefore is essential to the cemetery. \* \* \* For years the construction<sup>2</sup> of these roads has gone to the Committee on Military Affairs. Never before, as far as the present occupant of the chair knows, has a proposition of this kind been added to an appropriation bill. \* \* \* The Chair is of opinion that unless the bill itself said that it was for a Government road or for the improvement of a road already owned by the Government the Comptroller of the Treasury would not be authorized in paying any money out for this improvement. \* \* \* The present occupant of the chair will state that under the only ruling on this proposition heretofore made not only was that language in the bill, but the chairman of the committee stated that the Government owned the roadway. That seems to be entirely sufficient. If this language had been different from what it is, and a limitation on an appropriation had been sought, the ruling of the Chair might have been different, but under the circumstances it is very clear to the Chair that it is obnoxious to the rule, and the Chair therefore sustains the point of order.

<sup>1</sup>James E. Watson, of Indiana, Chairman.

<sup>2</sup>Meaning that legislation to authorize the construction of these roads is within the jurisdiction of the Committee on Military Affairs.

**3799. The building of a road on land not owned by the Government was held not to be in continuation of certain Government works on a battlefield.**—On February 19, 1901,<sup>1</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. George A. Pearre, of Maryland, offered this amendment:

For the construction of a road from the intersection of Mill street and the United States Government road in the town of Sharpsburg, Washington County, Md., to the Eleventh Connecticut monument over Burnside Bridge, within the limits of the battlefield of Antietam, the sum of \$10,000: *Provided*, That no part of such sum shall be expended until the title to said roadway shall be vested in the United States.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the amendment, urging that it could not be for a purpose in continuation of a public work, since the title to the roadway was not vested in the United States Government.

The Chairman<sup>2</sup> sustained the point of order.

**3800. An appropriation to man and equip vessels already possessed by the Coast Survey was held to be in order.**—On May 4, 1900,<sup>3</sup> the sundry civil appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and under the head of “Coast and Geodetic Survey” this paragraph was read:

Pay and subsistence of enlisted men: For pay and subsistence of engineers, surgeons, captains’ clerks, ships’ draftsmen, cadets, and enlisted petty officers and seamen of all classes, including the advance purchase of clothing and small stores for issue, to be reimbursed from the wages of the person to whom issued, in accordance with regulations established by the Secretary of the Treasury, \$182,745.

Mr. Alston G. Dayton, of West Virginia, made a point of order against the paragraph that it was new legislation.

After debate, the Chairman<sup>4</sup> held, reading from the Revised Statutes:

Section 4686 provides that—

“The President is authorized, for any of the purposes of surveying the coasts of the United States, to cause to be employed such of the public vessels in actual service as he deems it expedient to employ, and to give such instructions for regulating their conduct as he deems proper, according to the tenor of this title.”

And section 4684 provides:

“The President shall carry into effect the plan of the board, as agreed upon by a majority of its members, and shall cause to be employed as many officers of the Army and Navy of the United States as will be compatible with the successful prosecution of the work.”

And so on.

Now, it seems very apparent that it was the intent of the law that the President should detail the vessels and their crews from the Navy Department. It was not contemplated that the President should detail public vessels in service unless they were provided with crews. It is impossible to separate the vessel and the crew, so far as any purposes of the Coast and Geodetic Survey are concerned, and therefore the Chair thinks that the point of order should be sustained.

Mr. Cannon thereupon offered the following amendment in place of the paragraph ruled out:

<sup>1</sup> Second session Fifty-sixth Congress, Record, pp. 2678, 2679.

<sup>2</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>3</sup> First session Fifty-sixth Congress, Record, pp. 5168–5172.

<sup>4</sup> John Dalzell, of Pennsylvania, Chairman.

For all necessary employees to man and equip the vessels of the Coast and Geodetic Survey to execute the work of the Survey herein provided for and authorized by law, \$182,745.

Mr. Dayton having made a point of order, Mr. Cannon stated that there were at least fourteen vessels of the Coast Survey that had never had any connection with the Navy, and urged that an appropriation for their operation must be in order.

After debate, the Chairman<sup>1</sup> held:

Upon the statement of the gentleman from Illinois that there are now in the Coast and Geodetic Survey and have been vessels and seamen, the Chair assumes, outside of those detailed by the Navy Department; and in view of the fact that if the Chair be wrong the committee can correct it by its vote upon this amendment, the Chair overrules the point of order on the amendment; and the question is on agreeing to the amendment offered by the gentleman from Illinois.

The question was taken, and the amendment was agreed to, ayes 61, noes 11.

**3801. An appropriation for operating and repairing a sawmill already constructed by the Government was held to be in continuation of a public work.**—On December 20, 1900,<sup>2</sup> the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk read this section:

For operating one portable sawmill for the Klamath Agency, Oreg., and for necessary repairs to same, \$1,500.

Mr. Joseph G. Cannon, of Illinois, having made a point of order, Mr. James S. Sherman, of New York, stated that in the last Indian appropriation bill provision had been made for the construction of the mill.

The Chairman<sup>3</sup> held:

This appropriation having been contained in the last bill, the Chair is inclined to rule that this must be regarded as a continuing public work, and the point of order will be overruled.

**3802.** On December 20, 1900,<sup>4</sup> the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and this paragraph had been read:

To pay Lieut. Col. James F. Randlett, retired from the Army, while serving as agent at the Uintah and Ouray Agency, Utah (as provided in 27 U. S. Stat., p. 120), for six months and twenty-three days, at the rate of \$1,800 per annum, the sum of \$1,015.

Mr. Joseph G. Cannon, having reserved a point of order, an amendment was offered to provide for payment for certain supplies furnished under provisions of the Indian appropriation act of 1896.

Mr. Cannon insisted upon his point of order, both as against the paragraph and the amendment.

The Chairman<sup>3</sup> said:

The point of order being made, the Chair will hold that the amendment is clearly out of order, being an amendment which should be carried on a deficiency bill or a separate bill; and so the point of order is sustained.

---

<sup>1</sup> John Dalzell, of Pennsylvania, Chairman.

<sup>2</sup> Second session Fifty-sixth Congress, Record, p. 477.

<sup>3</sup> Henry S. Boutell, of Illinois, Chairman.

<sup>4</sup> Second session Fifty-sixth Congress, Record, p. 479.

**3803. An appropriation to repair a bridge built by the Government was held in order as for continuation of a public work.**—On January 28, 1897,<sup>1</sup> the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when Mr. Frank W. Mondell, of Wyoming, moved an amendment making an appropriation for the repair of the bridge across Big Wind River, on the Shoshone Reservation in Wyoming.

Mr. Joseph G. Cannon having made a point of order against the amendment, on the ground that it was not such a public work as was contemplated by the rule, Mr. Mondell stated that the bridge was originally built by the Government.

The Chairman<sup>2</sup> overruled the point of order.

**3804. The continuation of special facilities for mail service on trunk lines of railroad has been held to be such public work or object as would justify provision on an appropriation bill.**

**Propositions to create “necessary and special facilities” for transporting the mails on railroads are subject to the point of order that they involve change of existing law.**

On February 2, 1905,<sup>3</sup> the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the following paragraph was read:

For continuing necessary and special facilities on trunk lines from Kansas City, Mo., to Newton, Kans., \$25,000, or so much thereof as may be necessary: *Provided*, That no part of this appropriation shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interest of the postal service.

Mr. Jack Beall, of Texas, made the point of order that the appropriation was not authorized by law.

After debate the Chairman<sup>4</sup> held:

The Chair finds that the question of order raised against this paragraph has been more than once directly ruled upon by previous occupants of the chair in Committee of the Whole.

On several occasions the point of order has been made against this special provision that it was contrary to existing law, and the Chair finds that the rulings of former occupants of the Chair have been—the Chair reads from Parliamentary Precedents, by Mr. Hinds—that “the continuation of special facilities for mail service on trunk lines of railroad has been held to be such public work or object as would justify provision on an appropriation bill.”

It has been held on several occasions that an appropriation for special facilities for mail service on trunk lines was in order because it was in continuation of a public work in progress.

The present occupant of the chair, while feeling that the ruling goes to the extreme limit as to what may be included as a continuing work, does not feel that he is authorized to upset a precedent so well established, and upon which Congress has acted again and again in making appropriations. The Chair therefore overrules the point of order.

Mr. George W. Norris, of Nebraska, proposed to amend the paragraph by striking out, in line 14, page 18, the words “Kansas City, Mo., to Newton, Kans.,” and insert in lieu thereof the words “Orleans, Nebr., to St. Francis, Kans.”

Mr. William S. Cowherd, of Missouri, made a point of order against an amendment.

<sup>1</sup> Second session Fifty-fourth Congress, Record, pp. 1261, 1268.

<sup>2</sup> Albert J. Hopkins, of Illinois, Chairman.

<sup>3</sup> Third session Fifty-eighth Congress, Record, pp 1793, 1794, 1795.

<sup>4</sup> George P. Lawrence, of Massachusetts, Chairman.

The Chairman ruled:

The gentleman from Missouri makes the point of order that the amendment is contrary to existing law. The Chair will state that the provision in the preceding paragraph was held to be in order because it was a continuation of a public work now in progress. This amendment provides for a new service which is not in progress, and consequently the Chair sustains the point of order.

**3805.** On February 18, 1893,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union, considering the post-office appropriation bill.

Mr. Nelson Dingley, Jr., of Maine, having made a point of order against this paragraph of the bill—

For necessary and special facilities on trunk lines from Springfield, Mass., via New York and Washington, to Atlanta and New Orleans, \$196,614.22—

The Chairman,<sup>2</sup> after debate, ruled as follows:

While there is no general law authorizing appropriations for special facilities on trunk lines of railroads, the Chair finds in his investigation of this question that appropriations for this purpose have been made for the last fifteen or sixteen years. The Chair further finds that the question of order raised against this paragraph has been more than once directly ruled upon by previous occupants of the chair in Committee of the Whole. On the 21st of February, 1891, the then Chairman of the Committee of the Whole on the post-office appropriation bill ruled as follows upon the point of order made that there was no law authorizing this appropriation:<sup>3</sup>

“The language of the paragraph ‘necessary and special facilities on trunk lines’ has been in annual appropriation bills for the last ten years; and, at all events, the expenditure proposed is in continuation of appropriations for such public objects as are already in progress. The proviso simply gives the Postmaster-General a discretionary power that changes no existing law and is not obnoxious to the rule.”

That seems to be a decision directly on the point that while there is no general law authorizing an appropriation for special mail facilities, nevertheless an appropriation for that purpose is not obnoxious to the point of order on that ground, for the reason that the first part of clause 2 of Rule XXI authorizes an appropriation to be reported in any general appropriation bill or to be in order as an amendment thereto for any expenditure not previously authorized by law, provided it is in continuation of appropriations for such public works and objects as are already in progress.

Now, the transportation of the mails is certainly a public object already in progress; and inasmuch as appropriations for special mail facilities have been made for the last fifteen or sixteen years upon post-office appropriation bills, the Chair is constrained to rule that such appropriation in the present bill is not obnoxious to the point of order made against it.

It is further objected to this paragraph that if there be existing law authorizing special mail facilities, this is a change of such law in that it departs from the law of 1892 in specifying certain cities of the United States between which these special mail facilities are to be had. The Chair finds that in the post-office appropriation bill of 1892, approved July 13 of that year, this language is used:

“For necessary and special facilities on trunk lines, \$196,614.22.”

It will be observed that this paragraph of the bill of 1892 is not a general continuing law. It has operation merely for the fiscal year for which the bill was passed. It is not “an existing law” in the sense that the pending paragraph in the bill, against which the point of order is made, is a change of existing law.

The words “from Springfield, Mass., via New York, Washington, and Atlanta, to New Orleans,” in the pending proposition are especially objected to, and it is urged strenuously that they make the paragraph obnoxious to the point of order. The Chair thinks that those words are merely a limitation upon the expenditure of the money appropriated by the bill. The expenditure itself, coming under the head of an appropriation “for such public objects as are already in progress,” the Chair thinks that

<sup>1</sup> Second session Fifty-second Congress, Record, pp. 1807, 1813.

<sup>2</sup> Newton C. Blanchard, of Louisiana, Chairman.

<sup>3</sup> Chairman Allen, of Michigan. (See Congressional Record, First session Fifty-first Congress, p. 3092.) The full ruling is quoted by Chairman Blanchard.

it is in order under the rule to place a limitation upon that expenditure, and that the words indicating the principal cities between which these special mail facilities are to be conducted are merely such a limitation.

The Chair finds, in the post-office appropriation bill approved May 4, 1882, this language:

“For necessary and special facilities on trunk lines, \$600,000, said facilities to be extended as far as practicable to the principal cities in the United States.”

Now, that language did not indicate what particular cities these special mail facilities should apply to, but it did indicate that this system was to be in operation between “the principal cities of the United States.” The paragraph in the pending bill goes only a little further, by indicating the particular cities between which these special facilities are to be had.

The Chair thinks the use of these words, being a mere limitation upon the expenditure of the money, do not make the paragraph obnoxious to the rule. The Postmaster-General under the present current appropriation could do just what this paragraph directs, and this addition to it is simply a limitation upon his discretion and upon the distribution and expenditure of the money.

The Chair finds abundant authority to sustain this position. It was ruled by the gentleman from West Virginia [Mr. Wilson], as Chairman of the Committee of the Whole, in the first session of the present Congress, on March 21, 1892, that an amendment provided that no money appropriated in the pending bill should be applied in a certain lawful way—that is to say, in the transportation of troops on certain railroads—was in order, as being merely a limitation of expenditure and not a change of the existing law. In his decision he used this language:

“The Chair has no doubt that the committee, acting under the rules in making an appropriation, may so limit that appropriation as to direct who shall and who shall not be its beneficiaries.”

The language used in the pending paragraph contemplates that the railroads connecting the cities from Springfield, Mass., by way of New York and Washington, to Atlanta and New Orleans, shall be the beneficiaries of this fund, and that this is permissible, the Chair submits, was directly ruled by the gentleman from West Virginia in the language just quoted.

In the Journal, first session Fifty-second Congress, page 22 (Mr. Speaker pro tempore McMillin presiding), the Chair finds this ruling:

“An amendment to an appropriation bill expressing the sense of the Government as to the manner in which funds appropriated should be distributed is not subject to the point of order that it is not germane to the bill.”

The Chair feels constrained to overrule the point of order, holding that the paragraph is not obnoxious to the rule, in that it is for a public object already in progress, and the words indicating the cities between which the special mail facilities are to be had are a mere limitation upon the discretion of the Postmaster-General in the distribution and expenditure of the fund.

Mr. W. W. Dickerson, of Kentucky, having appealed, the decision of the Chair was affirmed by a vote of 98 ayes to 23 noes.

**3806.** On March 10, 1896,<sup>1</sup> the post-office appropriation bill being under consideration in Committee of the Whole House on the state of the Union, Mr. Eugene F. Loud, of California, raised a point of order against this paragraph of the bill:

For necessary and special facilities on trunk lines from Boston, Mass., by way of New York and Washington, to Atlanta and New Orleans, \$196,614.22: *Provided*, That no part of the appropriation made by this paragraph shall be expended unless the Postmaster-General shall deem such expenditure necessary in order to promote the interest of the postal service.

After debate the Chairman<sup>2</sup> ruled:

The point of order is raised upon this provision of clause 2 of Rule XXI, which contains two propositions:

“2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress; nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

<sup>1</sup> First session Fifty-fourth Congress, Record, p. 2664.

<sup>2</sup> Sereno E. Payne, of New York, Chairman.

On the last proposition in that clause of the rule the Chair would be in no doubt whatever but that the point of order was well taken, because the Chair finds that the general law upon the subject is that the pay per annum per mile shall not exceed the following rates, which are specified, and this appropriation is in excess of the amount provided by the general law. Now, this appropriation has been in the appropriation bills for the last seventeen years, an excess over the amount limited by the general law, for substantially this route—for this exact route for two years, and substantially this route for a large portion of the time—but the general proposition has been in the bill for seventeen years.

Now, it has been claimed heretofore—perhaps not so strenuously to-day—that placing that item in the appropriation bill for the year changed the existing law not only for the time the appropriation took effect, but for all time thereafter. The present occupant of the chair has expressed himself upon that question before, that such appropriation only changes the law for the year for which the appropriation is made; that it does change the law as to that year, but for no subsequent year; and if this was the only clause in the rule the Chair would feel constrained, notwithstanding the decisions of previous Congresses—so plain is the law and the rule in that regard—to sustain the point of order upon this second proposition.

But there is another provision in the rule to which the Chair will call attention:

“2. No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress.”

The Chair has examined the decisions made upon this question in former Congresses. There are three or four distinct rulings, and generally the ruling of the Chair has been based upon the first proposition in this second clause of Rule XXI, that this was in continuation of objects already appropriated for. That may be a strained construction of that clause of the rule. If it was an original proposition, and there never had been any decision by any previous House, the present occupant of the chair would be inclined to view the second clause of that rule as applying to all cases:

“Nor shall any provision changing existing law be in order in any general appropriation bill or in any amendment thereto.”

The Chair would be inclined to hold that that second clause covered every case; but after consideration by different Members of the House who have occupied the chair, and the reasons that have been given after full debate, and also in view of the fact that the committee has on one occasion at least, by a large majority, sustained the Chair in that ruling, the Chair is inclined to follow the precedent thus set and to hold that this paragraph is in order under the first proposition of the second clause of Rule XXI, as being in continuation of an object already appropriated for and authorized by law, although that authorization is limited to the present fiscal year. The Chair therefore overrules the point of order upon that ground.

**3807. The recoinage of uncurrent fractional silver coins in the Treasury was held to be in continuation of a public work or object already in progress.**—On May 18, 1892,<sup>1</sup> the House was in Committee of the Whole House on the state of the Union, considering the sundry civil appropriation bill.

A section having been reached relating to the recoinage of silver coins, on May 16, Mr. Charles Tracey, of New York, raised a point of order that the section would constitute a change of law.

After examination and consideration the Chairman<sup>2</sup> ruled as follows:

The point of order is made upon the paragraph which the Chair will read:

“Recoinage of silver coins: For recoinage of the uncurrent fractional silver coins abraded below the limit of tolerance in the Treasury, to be expended under the direction of the Secretary of the Treasury, \$100,000.”

The rule invoked in connection with this paragraph provides that—

No appropriation shall be reported in any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriations for such public works and objects as are already in progress.

<sup>1</sup>First session Fifty-second Congress, Record, pp. 4294, 4385.

<sup>2</sup>Rufus E. Lester, of Georgia, Chairman.

As the Chair understands, the act of 1875, called the Resumption act, provided that the fractional currency of the country shall be redeemed in coin, and that the silver coin for the purpose of this exchange of resumption should be the subsidiary coinage—50-cent pieces, 25-cent pieces, and 10-cent pieces. That act does not prescribe how the silver to be thus coined shall come into the Treasury. The Chair inclines to the opinion that, under a proper construction of that law, any silver in the Treasury not pledged for some other use, any silver in the shape of unuseful coins, coins brought by abrasion below their nominal value, and therefore uncurrent, could really be regarded by the Secretary of the Treasury as silver bullion, and that under the act referred to, authorizing him to coin money for the redemption of the fractional currency, he would have the right to apply this silver for that purpose.

So far as the Chair is informed, no other silver is in the Treasury to be used for this purpose, and hence it would appear that under the authority to issue coin in redemption of fractional notes these abraded coins might properly be used.

There is now outstanding \$15,000,000 of fractional currency unredeemed, something over \$8,000,000 being estimated to be lost and about \$6,000,000 outstanding, according to the debt statement of the Government. Still the authority exists for the coinage of silver for the redemption of this currency, and, as already intimated, the Chair regards these abraded coins, reduced below tolerance, to be nothing else practically than silver bullion in the Treasury. While the use of this silver in this way may be in one sense called recoinage, it is actually coinage. This silver, although it may have been coin once, is no longer coin when it passes below the rate of tolerance; it is nothing more than silver bullion.

Besides, under the provision already quoted from the rule, the Chair thinks it reasonable to hold that the coinage or recoinage of the uncurrent silver in the Treasury has been in progress under authority of Congress for a number of years, that it is a thing necessary to be done; so that this may be considered as an "object of progress." Upon this ground, together with the other already stated, the Chair thinks that this paragraph may be retained. The point of order is overruled.<sup>1</sup>

<sup>1</sup> On May 18, 1892 (First session Fifty-second Congress, Record, pp. 4292, 4384, 4385), the House was in Committee of the Whole House on the state of the Union considering the sundry civil appropriation bill, and a point of order had been made in reference to two paragraphs, the first of which was:

"The Secretary of the Treasury is authorized to transfer to the United States mint at Philadelphia, for cleaning and reissue, any minor coins now in, or which may be hereafter received at, the sub-treasury offices in excess of the requirement for the current business of said offices; and the sum of \$500 is hereby appropriated for the expense of transportation for such reissue."

The Chairman (Rufus E. Lester, of Georgia) ruled:

"It is claimed that that paragraph is obnoxious to the second clause of Rule XXI of the House.

"Upon examination of the law the Chair finds that by paragraph 2 of the general appropriation act of 1888 the following enactment was made:

"The Secretary of the Treasury is authorized to transfer to the United States mints, for cleaning and reissue, any minor coins now in, or which may be hereafter received at, the subtreasury offices in excess of the requirements of the current business at said offices."

"It will be observed that this enactment was applicable not only to the then current year but was to apply also to 'any minor coins now in, or which may be hereafter received at, the subtreasury offices.' Consequently, there is existing law by which this appropriation is authorized, and therefore the Chair overrules the point of order as to that clause of the paragraph.

"The second clause reads as follows:

"And the Secretary of the Treasury is also authorized to recoin any and all the uncurrent minor coins now in the Treasury; and the sum of \$1,000, or so much thereof as may be necessary, is hereby appropriated to reimburse the Treasury for the loss on such recoinage; in all, \$1,500."

"As to this, the Chair finds that it provides for the recoinage of all the uncurrent minor coins. That provision includes, of course, coins which are not silver as well as silver minor coins. The Chair can find no existing express law, and no law in which it is implied or from which it can be inferred that this provision is authorized by any existing law; and it appears from the language that this paragraph itself gives the 'authority' to do this thing, making the law, and thereby implying that it is not authorized by existing law. The Chair therefore holds that this clause of the paragraph is obnoxious to the rule, and therefore sustains the point of order as to it."

Mr. Horace F. Bartine, of Nevada, having appealed, the decision of the Chair was sustained.

**3808. A proposition to continue an extra compensation for an ordinary facility for carrying the mails is not the continuation of a public work.**— On February 2, 1905,<sup>1</sup> the Post-Office appropriation bill was under consideration in Committee of the Whole House on the state of the Union, when the Clerk read the following paragraph:

For transportation of foreign mails, \$2,725,000, including additional compensation to the Oceanic Steamship Company for transporting by its steamer sailing from San Francisco to Tahiti all mails made up in the United States destined for the island of Tahiti, \$45,000: *Provided*, That the sum paid the Oceanic Steamship Company shall not exceed \$1 per mile, as authorized by act of March 3, 1891, entitled "An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce." *And provided further*, That hereafter the Postmaster-General shall be authorized to expend such sums as may be necessary, not exceeding \$55,000, to cover one-half of the cost of transportation, compensation, and expense of clerks to be employed in assorting and pouching mails in transit on steamships between the United States and other postal administrations in the International Postal Union, and not exceeding \$40,000 for transferring the foreign mail from incoming steamships in New York Bay to the several steamship and railway piers, and for transferring the foreign mail from incoming steamships in San Francisco Bay to the piers.

Mr. James M. Robinson, of Indiana, made a point of order against the paragraph as involving an expenditure not authorized by law. He stated the point of order as follows:

Point of order on the portion of section on page 18 relating to the additional compensation to the Oceanic Steamship Company for transporting by its steamers sailing from San Francisco to Tahiti, specifically stated, the words in lines 21, 22, 23, 24, and 25, on page 18, to wit: "Including additional compensation to the Oceanic Steamship Company for transporting by its steamers sailing from San Francisco to Tahiti all mails made up in the United States destined for the island of Tahiti, \$45,000;" and separately, the words: "*Provided*, That the sum paid the Oceanic Steamship Company shall not exceed \$1 per mile, as authorized by act of March 3, 1891, entitled 'An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce,'" as contrary to existing law and not a continuing appropriation.

Mr. Jesse Overstreet, of Indiana, argued that the work was a continuing work, and subject to the same rule as the special facilities on railroads. Furthermore, he said:

The law of March 3, 1901, known as the act to provide for ocean mail service between the United States and foreign ports and to promote commerce, customarily known as the "ocean mail act," fixes certain rates which may be paid by way of compensation. This provision against which this point is now made cites that law providing that the amount of pay shall not exceed the amount fixed by the law of March 3, 1891. In addition, therefore, Mr. Chairman, to the security of this provision from the point of order under the recent ruling of the Chair there is this additional security that it is linked with the law of March 3, 1891, and is therefore existing law, and this appropriation can not be contrary to existing law.

After further debate the Chairman<sup>2</sup> said:

The Chair would like to refer the chairman of the committee to section 4009 of the Revised Statutes, which reads:

"For transporting the mail between the United States and any foreign port, or between ports of the United States touching at a foreign port, the Postmaster-General may allow as compensation, if by a United States steamship, any sum not exceeding the sea and United States inland postage; and if by a foreign steamship or by a sailing vessel, any sum not exceeding the sea postage, on the mail so transported."

---

<sup>1</sup>Third session Fifty-eighth Congress, Record, pp. 1795–1798.

<sup>2</sup>George P. Lawrence, of Massachusetts, Chairman.

The Chair understands that to be the general law. Now, is this provision in violation of that general law?

And after additional debate the Chairman ruled:

The Chair desires especially to call the attention of the committee to the language of the law of 1891, which says:

"That the Postmaster-General is hereby authorized and empowered to enter into contracts for a term not less than five nor more than ten years in duration with American citizens for the carrying of mails on American steamships between ports of the United States and such ports of foreign countries, the Dominion of Canada excepted, as in his judgment will best subserve and promote the postal and commercial interests of the United States; the mail service on such lines to be equitably distributed among the Atlantic, Mexican, Gulf, and Pacific ports. Said contracts shall be made with the lowest responsible bidder for the performance of said service on each route, and the Postmaster-General shall have the right to reject all bids not in his opinion reasonable for the obtaining of the purposes named"

This law specifies clearly that said contracts shall be made, after advertisement, with the lowest responsible bidder for the performance of said service; and it seems to the Chair that the provisions of this paragraph to which objection is made are in conflict with the law of 1891.

The only way in which the appropriation can be justified is by construing it to be for a continuing work now in progress. It does not seem to the Chair that it is on the same plane with the appropriations authorized in the two preceding sections.

The two preceding sections authorize appropriations for special facilities on trunk lines. This is not an appropriation for a special facility; it is simply an appropriation for additional compensation which, so far as the Chair can see, is not authorized by law.

The Chair therefore feels that he must sustain the point of order.

Mr. Theodore A. Bell, of California, then proposed to add to the portion of the paragraph not ruled out the following:

Page 18, line 21, after the word "dollars," insert "of which sum \$45,000, or so much thereof as may be necessary, shall be available for contracts for carrying mails from San Francisco to Tahiti, in accordance with the act of March 3, 1891, entitled 'An act to provide for ocean mail service between the United States and foreign ports, and to promote commerce.'"

Mr. Robinson renewed the point of order for the same reason.

The Chairman said:

In the opinion of the Chair that amendment is not in conflict with the law of 1891, referred to by the Chair in its former ruling, and the Chair will overrule the point of order. The question then is on the amendment offered by the gentleman from California.

**3809. An appropriation for the support and civilization of a tribe of Indians was held not to be in continuation of the work of the Indian service.**—On December 20, 1900,<sup>1</sup> the Indian appropriation bill was under consideration in Committee of the Whole House on the state of the Union, and the Clerk had read this paragraph:

For the support and civilization of the Shebits, Muddy, and other Indians in southern Utah, \$2,500.

Mr. Joseph G. Cannon, of Illinois, made a point of order against the paragraph. After debate the Chairman<sup>2</sup> said:

<sup>1</sup>Second session Fifty-sixth Congress, Record, pp. 473, 474.

<sup>2</sup>James A. Tawney, of Minnesota, Chairman.

Section 2 of Rule XXI expressly provides:

“No appropriation shall be reported on any general appropriation bill, or be in order as an amendment thereto, for any expenditure not previously authorized by law, unless in continuation of appropriation for such public works and objects as are already in progress.”

The Chair does not understand the claim is made that this appropriation comes within the provisions of either one of those two clauses of section 2 of Rule XXI. It is not claimed that it is made in accordance with any treaty stipulation or existing law; and the latter clause of the paragraph is so general in its terms it might include other tribes of Indians. The language is, “and other Indians in southern Utah.” Not being in accordance with treaty stipulations, therefore, and not coming within the other provision of section 2 of the rule, the Chair sustains the point of order. \* \* \* The gentleman did not understand the Chair correctly if he understood that its decision is based on the words “other Indians of southern Utah.” The Chair does not think there is anything in the point of this appropriation being a “continuation of appropriations for public works and objects already in progress.” There was no appropriation made at the last session for the purposes or anything in relation thereto. It is entirely a new appropriation and is not authorized by existing law.